STATEMENT OF THE INVESTMENT COMPANY INSTITUTE

SARAH HOLDEN, SENIOR DIRECTOR, RETIREMENT & INVESTOR RESEARCH
AND
ELENA BARONE CHISM, ASSOCIATE COUNSEL - PENSION REGULATION

2014 ERISA ADVISORY COUNCIL
ISSUES AND CONSIDERATIONS AROUND FACILITATING LIFETIME PLAN PARTICIPATION

The Investment Company Institute (ICI)[1] appreciates the opportunity to appear before the ERISA Advisory Council. The Council has asked us to present research regarding rollover activity and the rollover decision. Part I of this testimony focuses on the specific questions posed by the Council regarding the aggregate volumes involved in rollovers, the reasons that people choose to roll employer-sponsored plan money into individual retirement accounts (IRAs), the sources of information that people consult when making rollovers, and other data relating to rollover activity. To address these issues, this testimony presents data drawn from a variety of sources including the Federal Reserve Board, the Internal Revenue Service (IRS) Statistics of Income Division, the Department of Labor (DOL or the "Department"), and surveys fielded by the ICI. Part II of this testimony focuses on the legal framework relating to distribution and rollover decisions, including the information currently available to plan participants as they decide what to do with their employer-sponsored retirement plan accumulations at job separation. This written statement is submitted in conjunction with testimony of Sarah Holden, Senior Director, Retirement and Investor Research, and Elena Barone Chism, Associate Counsel – Pension Regulation, before the Council on June 17, 2014.

American workers are highly mobile and are likely to engage with multiple employer-sponsored retirement plans over the course of a career. At job change, termination, or retirement, workers typically choose between leaving vested accumulations behind, cashing out, purchasing an annuity, or rolling over to an IRA or another qualified plan. Rollovers appear to be made most commonly to traditional IRAs, which hold a significant portion of the retirement savings of American workers. Traditional

[1] The Investment Company Institute (ICI) is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $16.8 trillion and serve more than 90 million shareholders. ICI's mutual fund members manage about half of defined contribution plan and IRA assets and advocate policies to make retirement saving more effective and secure.

IRAs were created in 1974 under the Employee Retirement Income Security Act (ERISA) for the purpose of allowing workers without access to workplace retirement plans to save for retirement and as a vehicle for holding retirement assets after leaving employment. Today, a large portion of the assets currently held in traditional IRAs are attributable to rollovers from employer-sponsored retirement plans (coming from both defined benefit [DB] and defined contribution [DC] plans). Household survey results regarding traditional IRA rollover activity indicate that traditional IRA–owning households with rollovers typically have multiple reasons for rolling over and consult multiple sources of information before rolling assets over. As discussed in greater detail in Part II, many disclosure requirements apply to plan sponsors and IRA providers, including disclosures designed to help individuals weigh the pros and cons of the rollover decision.

Part I.A of this testimony presents background information describing the components of Americans' assets earmarked for retirement and the role of IRAs in U.S. households' retirement savings. To provide insight into the mobility of the American workforce, data on private-sector worker tenure are presented. Finally, rollover data into IRAs from the IRS Statistics of Income division indicate the magnitude of rollover activity in aggregate.

Part I.B relies on household survey data to gain insight into households' thought processes as they considered their traditional IRA rollovers. About half of traditional IRA–owning households in 2013 indicated that they had made rollovers into their traditional IRAs at some point. These traditional IRA–owning households with rollovers were asked about the timing of their most recent rollover, the reasons for their most recent rollover, and the sources of information that they consulted when they made the decision to roll the money over.

Part I.C provides insights into individual traditional IRA investors' rollover activities, drawing from The IRA Investor Database™, which has information on 10.4 million traditional IRA investors at year-end 2012. About one in 10 traditional IRA investors have rollovers in any given year, but it tends to be a different group of investors each year. Cumulating rollover activity over time provides a better view into its role in traditional IRAs, and about four in 10 traditional IRA investors in 2012 had made rollovers since 2007 (the only time period that can be tracked in the database). Traditional IRA investors with rollovers hail from all age groups, and rollover amounts cover a full range of sizes.

Part I.D explores the asset composition of IRAs and the mutual fund expenses for IRA investors' mutual fund holdings. Forty-four percent of IRA assets were invested in mutual funds at year-end 2012, and IRA mutual fund assets were concentrated in lower-cost funds.

Part II of this testimony reviews the requirements imposed on plans to provide information to participants to assist them in making distribution decisions and the applicable law and rules governing

IRA providers, including the disclosures they are required to make to IRA investors. Our analysis finds that plan participants receive information explaining the consequences of taking a distribution from a plan and rolling it into an IRA and that all IRA investors receive information on fees and other features associated with their IRA and periodic reports on the status of their accounts. While plan participants are well-served by these disclosures, this testimony also suggests that the Department could consider certain steps to encourage employers to provide education and information to participants making distribution decisions.

I. IRAs and Rollover Activity

A. Background on the U.S. Retirement System and IRAs

At year-end 2013, Americans had $22.8 trillion in assets earmarked for retirement (Figure 1). IRAs were the single largest component, with $6.5 trillion, followed by private-sector 401(k) plans with $4.2 trillion. State and local government DB plans had $3.7 trillion, while private-sector DB plans had $3.0 trillion. Federal DB plans had $1.4 trillion, predominantly invested in nonmarketable Treasury securities, and the federal Thrift Savings Plan (TSP) had $0.4 trillion. The remaining assets were in annuities held outside of retirement accounts ($2.0 trillion), 403(b) plans ($0.9 trillion), other private-sector DC plans ($0.5 trillion), and 457 plans ($0.2 trillion).

First created under ERISA, IRAs have grown to be the largest single component of the U.S. retirement system. IRAs were designed to be both contributory retirement accounts and rollover vehicles for assets accumulated in employer-sponsored retirement plans. IRAs represented 29 percent of all U.S. retirement assets and 10 percent of U.S. households' financial assets at year-end 2013,[2] holding $6.5 trillion in assets (Figure 1). Traditional IRAs were 85 percent of total IRA assets, holding $5.6 trillion at year-end 2013.[3] Although contributions played a significant role in the growth in traditional IRAs in the early-to-mid 1980s,[4] more recent growth has resulted in large part from rollovers into IRAs from employer-sponsored retirement plans. IRS Statistics of Income data indicate that rollovers to

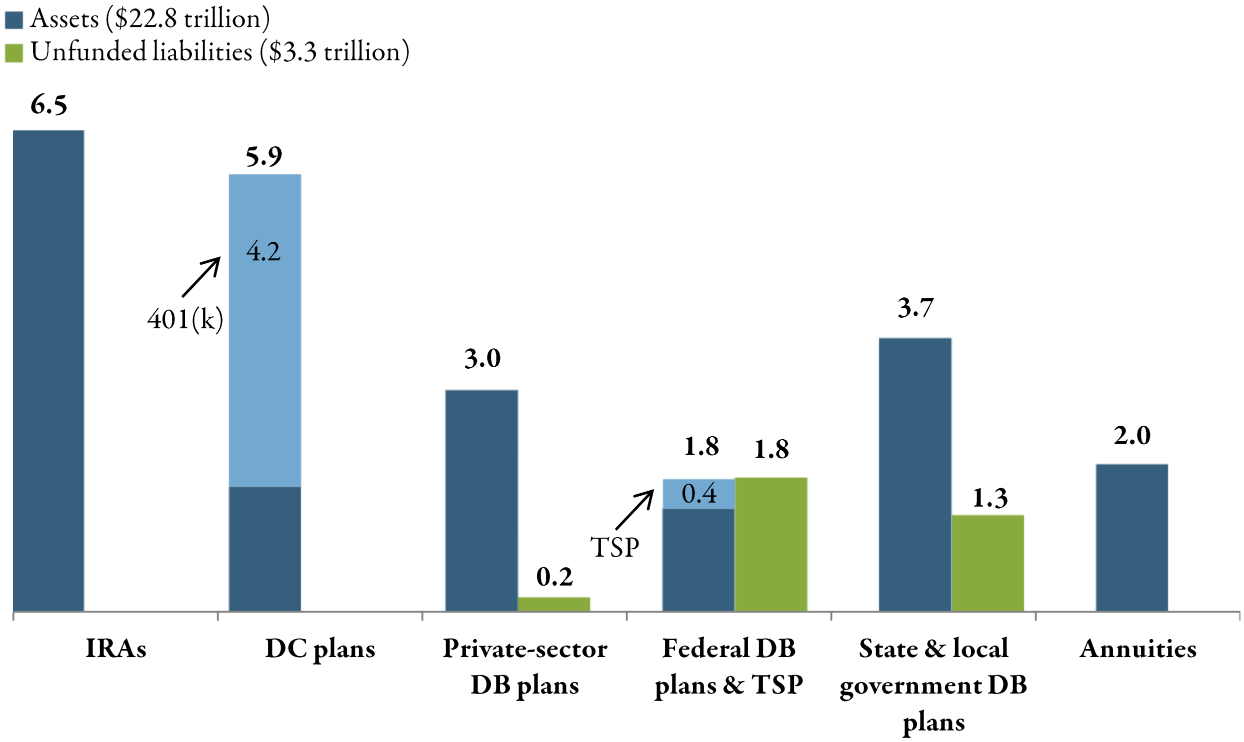
[2] At year-end 2013, U.S. households' financial assets were $66.5 trillion. *See* Table L.100 in U.S. Federal Reserve Board, *Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, First Quarter 2014, Z.1 Release* (June 2014), Washington, DC: Federal Reserve Board, available at www.federalreserve.gov/releases/z1/current/default.html.

[3] *See* Table 7 in Investment Company Institute, "The U.S. Retirement Market, Fourth Quarter 2013" (March 2014), available at www.ici.org/info/ret_13_q4_data.xls.

[4] For a discussion of the history of IRAs, *see* Holden, Ireland, Leonard-Chambers, and Bogdan, "The Individual Retirement Account at Age 30: A Retrospective," *Investment Company Institute Perspective* 11, no. 1 (February 2005), available at www.ici.org/pdf/per11-01.pdf.

traditional IRAs totaled $288 billion in 2010 (latest data available).[5] ICI tabulation of Federal Reserve Board Survey of Consumer Finances data finds that about half of traditional IRA assets in 2010 were reported by households to be the result of rollovers (from either DB or DC plans).

Figure 1
U.S. Retirement Assets and Unfunded Liabilities
Trillions of dollars, end of period, 2013:Q4



Note: For definitions of plan categories and a complete list of data sources, see Tables 1 and 4 in "The U.S. Retirement Market, Fourth Quarter 2013." Some data are estimated. Components may not add to the total because of rounding.
Sources: Investment Company Institute, *The U.S. Retirement Market, Fourth Quarter 2013* (March 2014) and U.S. Federal Reserve Board 2014

ICI household survey information indicates that 46.1 million, or 38 percent of, U.S. households held IRAs in 2013 (Figure 2).[6] Ownership of IRAs often overlapped with employer-

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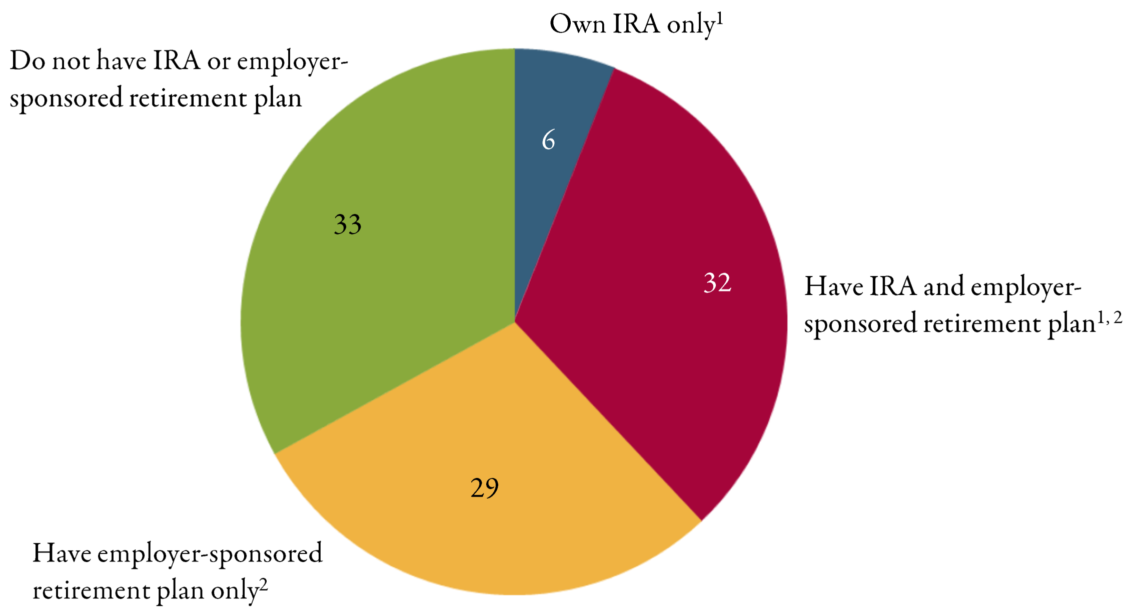
[5] For detailed information from IRS Form 5498 tabulations for 2010, *see* Bryant and Gober, "Accumulation and Distribution of Individual Retirement Arrangements, 2010," *Statistics of Income Bulletin* (Fall 2013): 193–210, Washington, DC: IRS Statistics of Income Division, available at www.irs.gov/pub/irs-soi/13fallbul.pdf.

[6] Data on the number and percentage of U.S. households owning IRAs are based on ICI's Annual Mutual Fund Shareholder Tracking Survey conducted in May 2013 of 4,001 randomly selected, representative U.S. households, whether they own mutual funds or not. The survey collects information on a variety of asset categories and retirement plan and education

sponsored retirement plans: 32 percent of U.S. households indicated they had both IRAs and employer-sponsored retirement plans (DB and/or DC plans). Another 29 percent of U.S. households indicated they had only employer-sponsored retirement plans. All told, 67 percent of U.S. households reported tax-advantaged retirement savings in 2013.

Figure 2
Many U.S. Households Have Tax-Advantaged Retirement Savings
Percentage of U.S. households, 2013



Total number of U.S. households: 122.5 million

[1]IRAs include traditional IRAs, Roth IRAs, and employer-sponsored IRAs (SEP IRAs, SAR-SEP IRAs, and SIMPLE IRAs).

[2]Employer-sponsored retirement plans include DC and DB retirement plans.
Sources: Investment Company Institute Annual Mutual Fund Shareholder Tracking Survey and U.S. Census Bureau

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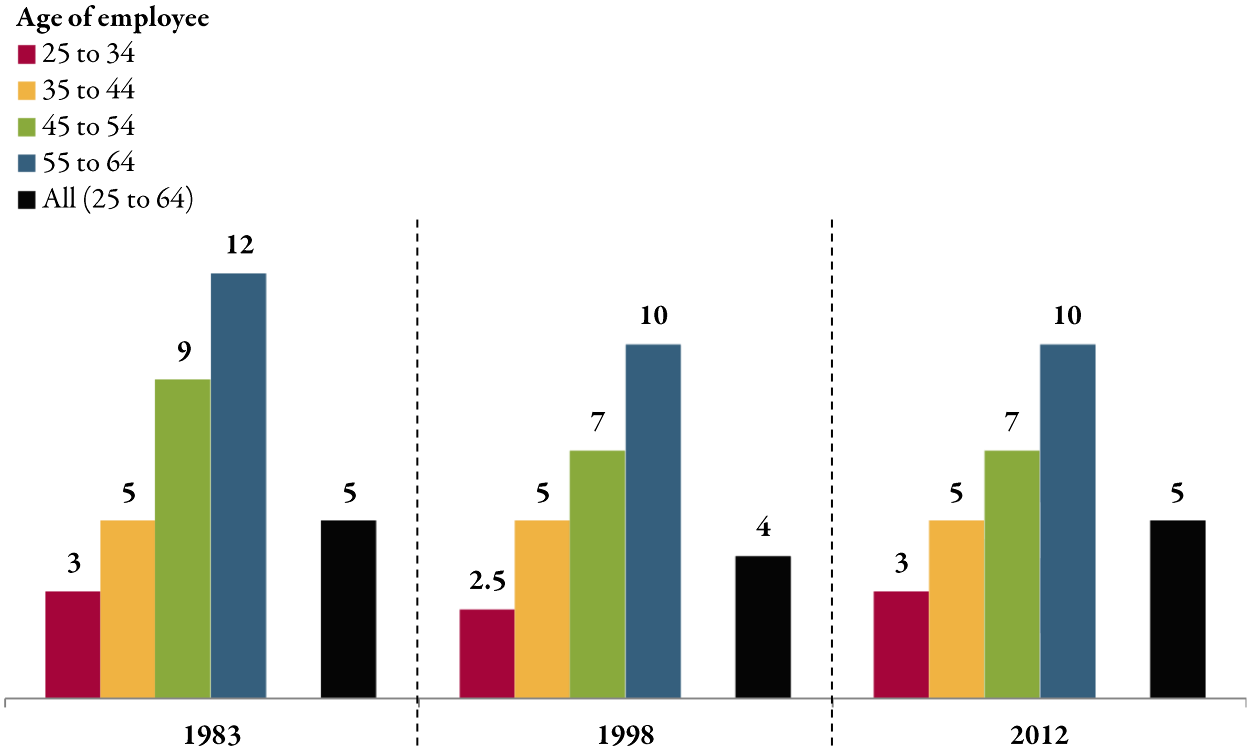
savings, in addition to demographic data. The standard error for the total sample is ±1.6 percentage points at the 95 percent confidence level. For further discussion and additional results from this survey, *see* Burham, Bogdan, and Schrass, "Ownership of Mutual Funds, Shareholder Sentiment, and Use of the Internet, 2013," *ICI Research Perspective* 19, no. 9 (October 2013), available at www.ici.org/pdf/per19-09.pdf. For incidence of IRA ownership from the survey, *see* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

In light of the mobility of American workers, it is perhaps not surprising that many U.S. households report multiple touch points with tax-advantaged retirement accumulations. The median tenure for private-sector wage and salary workers aged 25 to 64 was five years in 2012 (Figure 3). Tenure varied by worker age, ranging from three years among private-sector wage and salary workers aged 25 to 34, to 10 years among those aged 55 to 64. Congress, in creating traditional IRAs, facilitates workers' ability to preserve retirement accumulations as they move from job to job throughout their careers.

Figure 3
Median Tenure for Private-Sector Wage and Salary Workers
Length of employment at current employer, in years, by age group, selected years



Source: ICI tabulations of Current Population Surveys

Individual choice plays an important role in the decision at job change or retirement to leave money in the current employer's plan, roll over to the next employer's plan (if the plan accepts rollovers), roll over to an IRA, purchase an annuity, cash out, or do some combination of these options. While DC plan participants typically have account balances available for rollover or lump-sum distribution, DB plan participants also may have access to an accumulated account balance. Each individual circumstance is different, and thus there is no one-size-fits-all answer to the question of the disposition of plan accumulations for any given individual in any given plan.

B. The Rollover Decision

Traditional IRAs were the most common type of IRA owned, with nearly three in 10 U.S. households indicating they owned traditional IRAs in May 2013.[7] Among traditional IRA–owning households, about half (49 percent) indicated their traditional IRAs contained rollovers from employer-sponsored retirement plans and, among those with rollovers, more than half (56 percent) had made contributions to their traditional IRAs as well.[8]

Rollover activity, which indicates that many Americans seek to preserve their retirement savings, has fueled recent IRA growth. The most recent available data show that households transferred nearly $300 billion from employer-sponsored retirement plans to IRAs in 2010 (Figure 4).[9] The vast majority of rollovers went into traditional IRAs ($288 billion in 2010), while Roth IRAs received only about $8 billion in rollovers, likely reflecting that such activity has only been allowed relatively recently.[10]

[7] *See* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

[8] For characteristics and activity around contributions, rollovers, and withdrawals of U.S. households owning IRAs, *see* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf. The 2013 ICI IRA Owners Survey, conducted in May 2013, collected information from 3,006 randomly selected, representative U.S. households owning traditional IRAs, Roth IRAs, and employer-sponsored IRAs (SEP IRAs, SAR-SEP IRAs, and SIMPLE IRAs). The standard error for the total sample is ±1.8 percentage points at the 95 percent confidence level. IRA ownership does not include ownership of Coverdell Education Savings Accounts (formerly called Education IRAs).

[9] For additional detail, *see* Bryant and Gober, "Accumulation and Distribution of Individual Retirement Arrangements, 2010," *Statistics of Income Bulletin* (Fall 2013): 193–210, Washington, DC: IRS Statistics of Income Division, available at www.irs.gov/pub/irs-soi/13fallbul.pdf.

[10] Roth IRAs could accept rollovers from designated Roth accounts in employer-sponsored retirement plans beginning in 2006 and from other non-Roth sources in employer-sponsored retirement plans beginning in 2008.

Figure 4
Rollovers into IRAs
Billions of dollars, 2010

	Contributions[1]	Rollovers	Conversions[2]	Withdrawals[3]	Assets at year-end
Total IRAs	$51.2	$299.7	$64.8	$257.6	$5,029.5
Traditional IRAs	12.8	288.4	N/A	243.3	4,339.6
Roth IRAs	18.6	7.8	64.8	0.6	354.9
SEP IRAs	12.0	3.5	N/A	13.7	265.5
SIMPLE IRAs	7.9	n.a.	N/A	0.1	69.5

[1]For SEP and SIMPLE plans, total contributions include contributions made by the taxpayer directly as well as those made by an employer.
[2]Traditional, SEP, and SIMPLE IRAs can be converted to Roth IRAs.
[3]Withdrawals are reported on Form 1099-R; does not include withdrawals made for the purpose of rollovers to other IRA accounts if the transfer was made by the trustee; Roth IRA conversions are shown separately.
n.a.: not applicable
N/A: not available
Note: Components may not add to the total because of rounding.
Source: Internal Revenue Service Statistics of Income Division

In 2013, about 18 million U.S. households (or 49 percent of all U.S. households owning traditional IRAs) had traditional IRAs that included rollover assets.[11] With their most recent rollovers, the vast majority of these households (85 percent) transferred the entire retirement plan account balance into the traditional IRA (Figure 5, top panel).[12] More than eight in 10 traditional IRA–owning households with rollovers made their most recent rollover in 2000 or later, including 63 percent whose most recent rollover was within the past eight years (Figure 5, lower panel). Among households with rollovers in their traditional IRAs, 44 percent only had rollover IRAs (having never made traditional IRA contributions).[13]

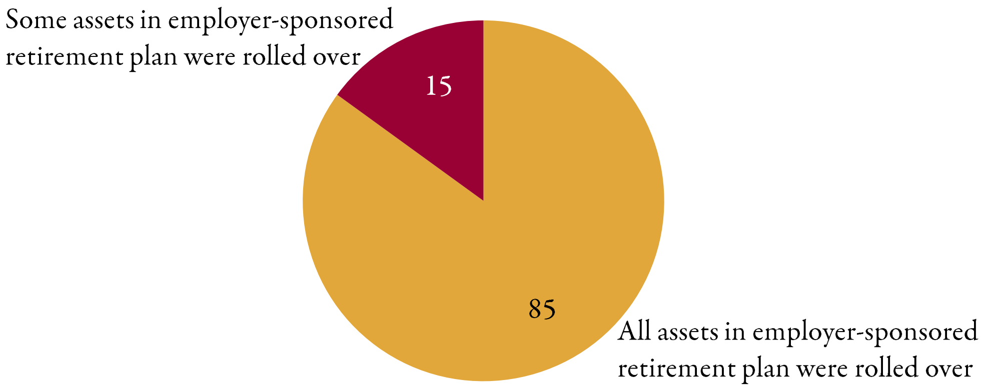
[11] *See* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

[12] In the case of a DC plan, this amount is the account balance. In the case of DB plans, this amount is the lump-sum distribution based on accrued benefits.

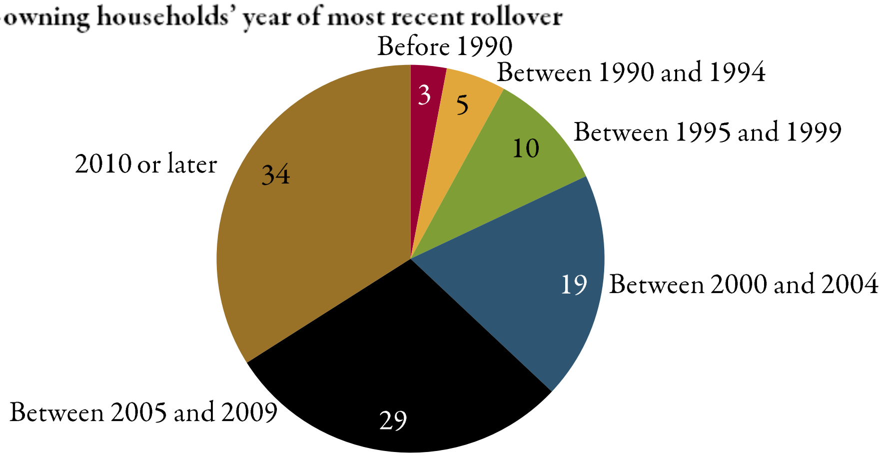
[13] *See* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

Figure 5
Amount and Timing of Most Recent Traditional IRA Rollover
Percentage of traditional IRA–owning households with rollovers, 2013

Amount of most recent traditional IRA rollover



Traditional IRA–owning households' year of most recent rollover



Note: Forty-nine percent of households owning traditional IRAs have traditional IRAs that include rollovers from employer-sponsored retirement plans.
Source: Investment Company Institute IRA Owners Survey

Reasons for Rollovers

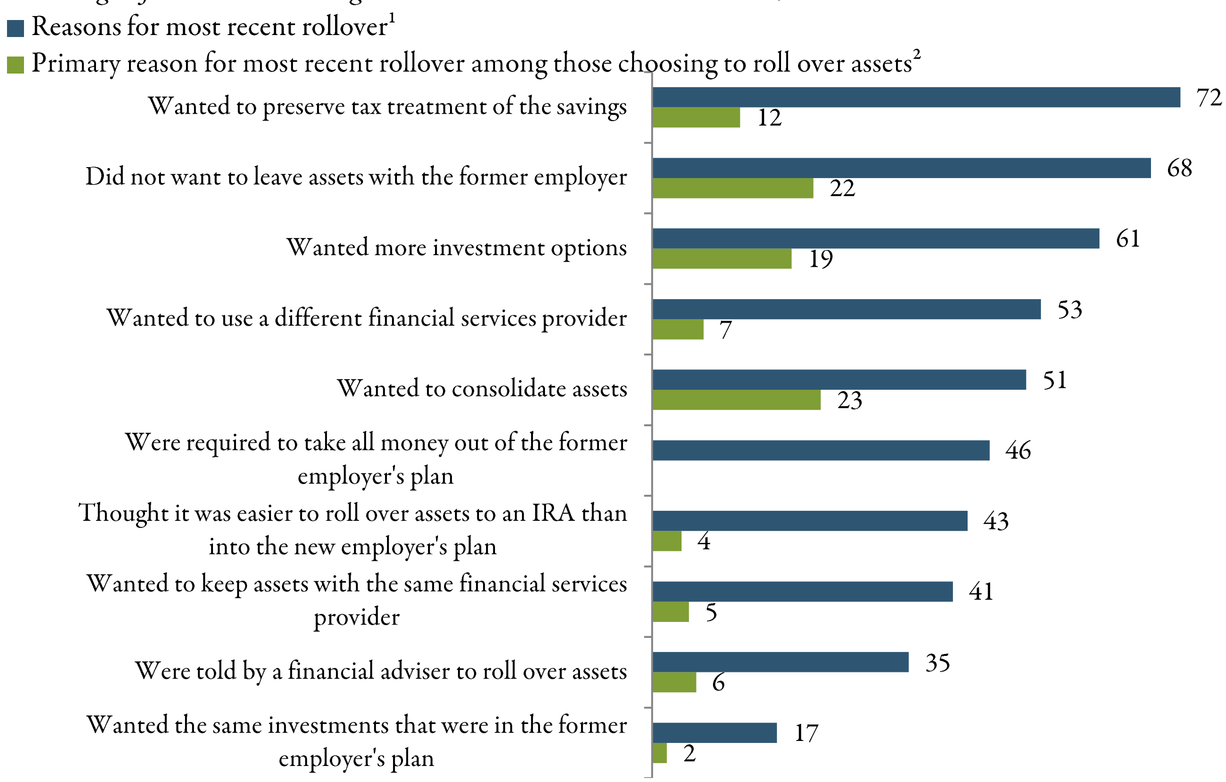
Most traditional IRA–owning households with rollovers had multiple reasons for rolling over the accumulations from their employer-sponsored retirement plans to traditional IRAs (Figure 6).[14] For example, 72 percent said they wanted to preserve the tax treatment of the savings and 68 percent did

[14] As discussed in Part II below, the Internal Revenue Code sets out a comprehensive disclosure regime with regard to information provided for distribution and rollover decisions. Plan sponsors must inform separating employees of information relevant to their distribution decision. IRA providers must disclose the relevant information to IRA owners at the outset and on an ongoing basis. In addition, financial planners, advisers, or brokers may have fiduciary obligations or be subject to other rules of practice with regard to advice to clients on distribution and rollover decisions.

not want to leave assets with their former employer. Sixty-one percent rolled over to get more investment options. Fifty-three percent rolled over to change financial services providers, while 41 percent kept their assets with the same financial services provider when they rolled over assets. Fifty-one percent of traditional IRA–owning households with rollovers indicated that consolidating assets was one of the reasons for the rollover.

When asked to identify the primary reason for the rollover, 23 percent said they wanted to consolidate assets, and 22 percent said they did not want to leave the assets with their former employer. Nineteen percent rolled over primarily for more investment options and 12 percent wanted to preserve the tax treatment of the savings. Six percent indicated the primary reason they rolled the money over was that a professional financial adviser recommended it.

Figure 6
Reasons for Most Recent Rollover
Percentage of households owning traditional IRAs that include rollovers, 2013



[1]Multiple responses are included for all responses except for respondents who were required to take the money out of their former employer's plan.
[2]Figure does not include the households owning traditional IRAs that include rollovers who were required to take the money out of their former employer's plan.
Source: Investment Company Institute IRA Owners Survey

Multiple Sources of Information Are Consulted for the Rollover Decision

Traditional IRA–owning households generally researched the decision to roll over money from their former employer's retirement plan into a traditional IRA. Two-thirds (67 percent) consulted multiple sources of information— the most common source of information was professional financial advisers, who were consulted by 64 percent of traditional IRA–owning households with rollovers (Figure 7). Nearly four in 10 traditional IRA–owning households with rollovers relied on information provided by their employers, with 31 percent of traditional IRA–owning households with rollovers using printed materials from their employers as a source of information. Twenty-nine percent indicated they used online materials from financial services firms.[15]

When asked to identify their primary source of information on the rollover decision, a range of solutions is evident. In 2013, 54 percent of traditional IRA–owning households with rollovers indicated they primarily relied on professional financial advisers, and older households were more likely to consult professional financial advisers than younger households. Eleven percent of traditional IRA–owning households with rollovers indicated their primary source of information was online materials from financial services firms, with younger households more likely to rely on online resources than older households.

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[15] A survey of retiring DC plan participants conducted in 2007 by ICI, found similar results. In late 2007, ICI surveyed recent retirees who had actively participated in DC plans (including 401(k), 403(b), and governmental DC plans) about how they used plan proceeds at retirement. Respondents pursued a range of outcomes reflecting their own personal needs, in many cases rolling some or all of their account balances over to IRAs. In making their distribution decision, retirees with a choice of options often consulted multiple sources of information. Forty-two percent indicated they sought advice from a professional financial adviser that they found on their own. Three in 10 indicated they attended a seminar or workshop offered by their employer; 29 percent reviewed printed materials provided by their employer; and 13 percent used a professional financial adviser provided by their employer. Fifteen percent sought advice from a publication and 10 percent considered information provided in mutual fund company materials. For the complete report, *see* Sabelhaus, Bogdan, and Holden, "Defined Contribution Plan Distribution Choices at Retirement: A Survey of Employees Retiring Between 2002 and 2007," *Investment Company Institute Research Series* (Fall 2008), available at www.ici.org/pdf/rpt_08_dcdd.pdf.

Figure 7
Sources of Information Consulted for Rollover Decision
Percentage of traditional IRA–owning households with rollovers, 2013

		Age of head of household[1]			
Sources of information[2]	**All**	**Younger than 50**	**50 to 59**	**60 to 69**	**70 or older**
Your spouse or partner	40	43	44	35	33
A coworker, friend, or family member	19	23	19	14	16
Your employer (printed or online materials, seminars, workshops)	39	42	38	36	33
A seminar or workshop sponsored by your employer	10	9	7	14	16
Printed materials provided by your employer	31	36	31	26	24
Online materials from your employer	17	19	16	16	10
Online materials from financial services firms	29	29	31	32	25
The IRS rules or publications	23	22	18	25	29
A professional financial adviser	64	58	64	67	73
Other	11	9	12	14	12
Primary source of information					
Your spouse or partner	6	5	7	5	5
A coworker, friend, or family member	5	7	5	4	6
Your employer (printed or online materials, seminars, workshops)	13	15	10	13	10
A seminar or workshop sponsored by your employer	3	3	1	3	4
Printed materials provided by your employer	8	8	7	8	6
Online materials from your employer	2	4	2	2	0
Online materials from financial services firms	11	15	13	7	2
The IRS rules or publications	4	4	2	6	5
A professional financial adviser	54	49	54	56	67
Other	7	5	9	9	5
Number of respondents:	*1,142*	*459*	*307*	*225*	*152*

[1]Age is based on the age of the sole or co-decisionmaker for household saving and investing.
[2]Multiple responses are included.
Note: Other responses given included: myself, other online information, bank, books and magazines, and seminars sponsored by a financial institution.
Source: Investment Company Institute IRA Owners Survey

In selecting the initial asset allocation of rollover assets in traditional IRAs, 10 percent of traditional IRA–owning households with rollovers indicated that their professional financial adviser selected the investments, and 48 percent indicated they worked together with a professional financial adviser to select the investments. Forty percent of traditional IRA–owning households with rollovers indicated that the household selected the investments without outside help.[16]

[16] The remaining 2 percent of households owning traditional IRAs that include rollovers indicated that someone else selected the initial asset allocation of the rollover assets in the traditional IRA. *See* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

Traditional IRAs preserve assets from employer-sponsored retirement plans. Households with rollover assets in their IRAs tend to have higher IRA balances, compared with IRAs funded purely by individual contributions. Among traditional IRA–owning households surveyed in 2013, median traditional IRA holdings that include rollovers were $70,000 in 2013, compared with median traditional IRA holdings of $30,000 for balances that did not include rollovers.[17]

C. **Analysis of Rollover Activity in 2012**

Using detailed information from The IRA Investor Database™ on 9.6 million traditional IRA investors aged 25 to 74 at year-end 2012, with 0.9 million of them making rollovers into their traditional IRAs in 2012, this section takes a close look at the frequency of rollover activity, the age composition of traditional IRA investors with rollovers, and the range of amounts rolled over.[18]

Rollover Activity Tends To Be Cumulative over Time

Rollovers among traditional IRA investors are relatively infrequent in any given year, and typically different groups of people tend to have rollovers from year to year. About one in 10 traditional IRA investors aged 25 to 74 had a rollover in any year between 2007 and 2012 (Figure 8). However, among traditional IRA investors with an account balance at year-end 2012, 40.2 percent had a rollover at some point between 2007 and 2012.[19]

This increase in rollover incidence when expanding the period of observation is consistent with expectations based on labor market dynamics and the work life cycle. In any given year, a certain fraction of workers with employer-sponsored coverage will separate from their employers, and when they do, it is possible that separation will generate a rollover event. Because separating from one's employer is not an annual event for most workers and not all workers roll over money from their

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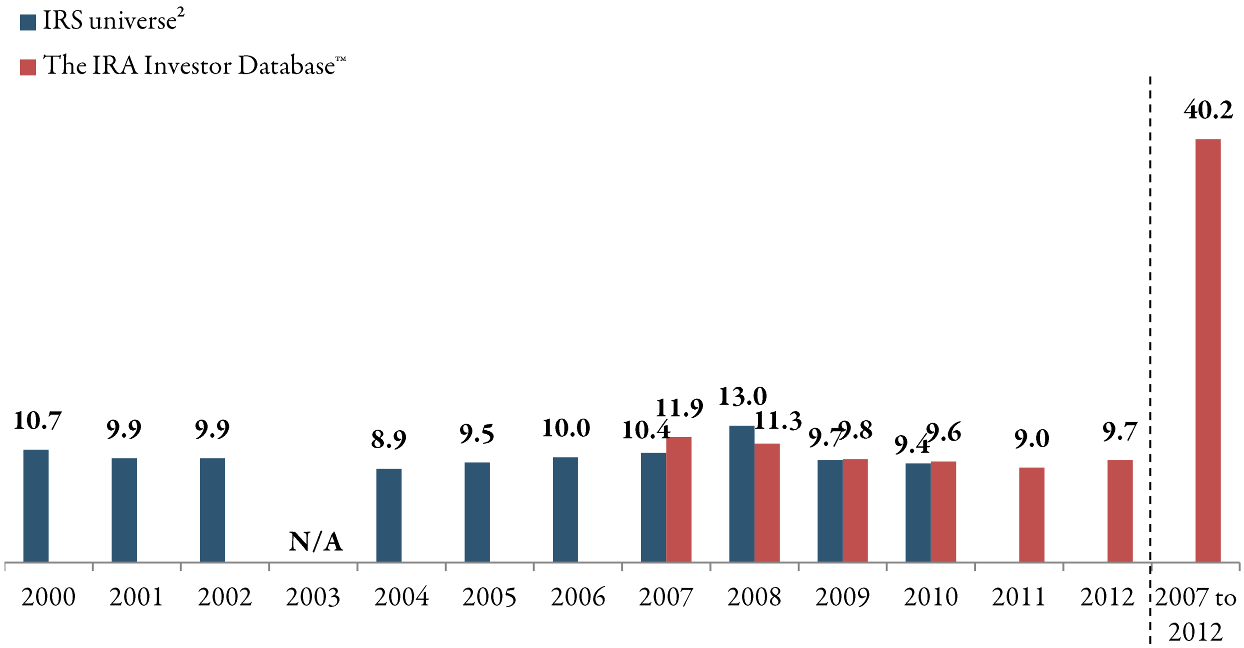
[17] *See* Figure 16 in Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

[18] *See* Holden and Bass, "The IRA Investor Profile: Traditional IRA Investors' Activity, 2007–2012," *ICI Research Report* (March 2014), available at www.ici.org/pdf/rpt_14_ira_traditional.pdf.

[19] This statistic undercounts the percentage of traditional IRA investors in 2012 with rollovers in their traditional IRAs because some will have rolled over money prior to 2007 and those rollovers cannot be identified in the database. In addition, rollovers made at a prior financial services firm cannot be identified in the database. *See* Holden and Bass, "The IRA Investor Profile: Traditional IRA Investors' Activity, 2007–2012," *ICI Research Report* (March 2014), available at www.ici.org/pdf/rpt_14_ira_traditional.pdf. As noted above in this testimony, about half of traditional IRA–owning households in 2013 indicate their traditional IRAs had rollovers in them.

employer plan into a traditional IRA at job separation, rollovers to traditional IRAs by a given individual will tend to be sporadic.[20]

Figure 8
Many Traditional IRA Investors Have Made Rollovers
Percentage of traditional IRA investors aged 25 to 74 with rollovers,[1] 2000–2012



[1]Traditional IRA investors with rollovers are traditional IRA investors (aged 25 to 74) who had rollovers into their traditional IRA in the year or years indicated.
[2]In the IRS universe, data are for traditional IRA investors of all ages.
Note: Rollovers made prior to 2007, as well as rollovers made prior to a change in financial services providers, cannot be identified in the database.
Sources: The IRA Investor Database™ and Internal Revenue Service Statistics of Income Division

Rollovers Often Were the Source of New Traditional IRAs in 2012

Although traditional IRAs can be opened with either rollovers or contributions, rollovers tend to be the most common source for new traditional IRAs. In 2012, more than two-thirds (68 percent) of new traditional IRAs in The IRA Investor Database were opened with just a rollover.[21] Another 2 percent were opened with both a rollover and a contribution, and 8 percent were opened with just a

[20] For discussion of the evolving role of IRAs, *see* Sabelhaus and Schrass, "The Evolving Role of IRAs in U.S. Retirement Planning," *Investment Company Institute Perspective* 15, no. 3 (November 2009), available at www.ici.org/pdf/per15-03.pdf.

[21] *See* Figure 3.1 in Holden and Bass, "The IRA Investor Profile: Traditional IRA Investors' Activity, 2007–2012," *ICI Research Report* (March 2014), available at www.ici.org/pdf/rpt_14_ira_traditional.pdf.

contribution. The remaining new traditional IRAs were transfers from one financial services firm to another and thus were unlikely to represent new IRAs. If these transfer accounts are excluded, 87 percent of new traditional IRAs in 2012 were opened exclusively with rollovers.

Traditional IRA Rollover Activity in 2012 by Investor Age

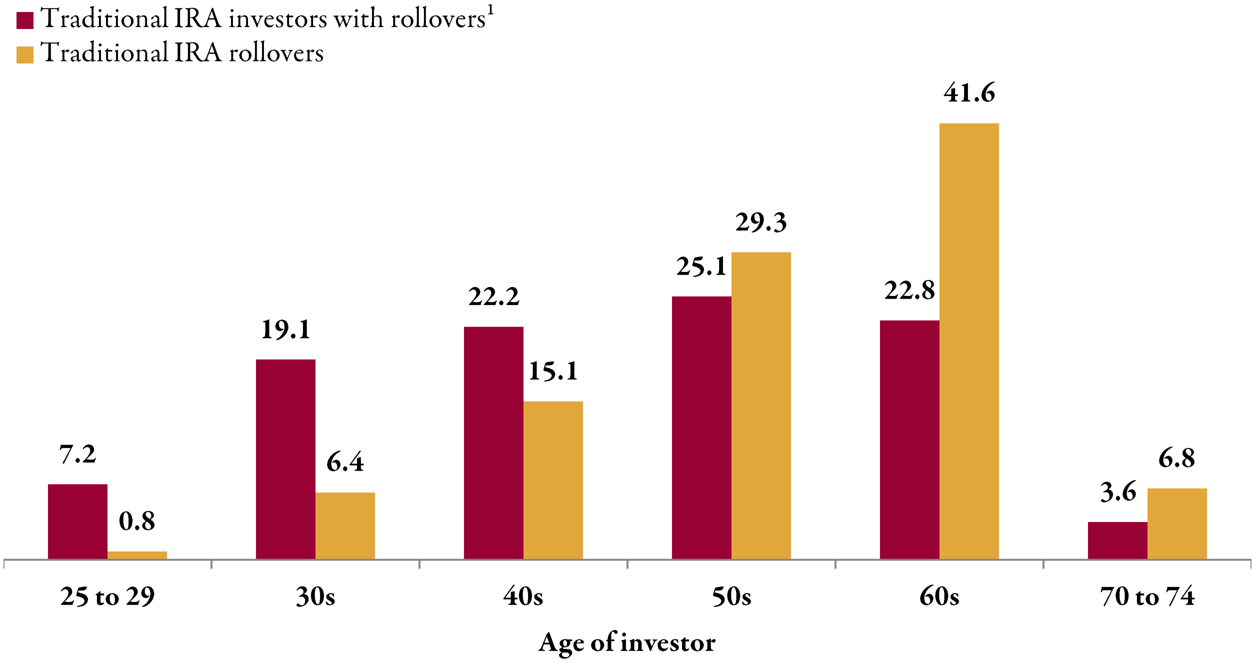
Overall, 9.7 percent of traditional IRA investors aged 25 to 74 had rollovers in 2012 (Figure 8).[22] Rollovers were distributed across all age groups (Figure 9). Indeed, 22 percent of the rollovers in 2012 were made by investors in their forties, 25 percent by those in their fifties, and 23 percent by those in their sixties. Having had more time to accumulate significant savings in their retirement plans and being toward or at the end of their careers, traditional IRA investors with rollovers in their sixties accounted for nearly 42 percent of all dollars rolled over. The youngest traditional IRA investors' rollovers accounted for less than 1 percent of rollover dollars, and rollovers of traditional IRA investors in their thirties were 6 percent of the total.

[22] The incidence of rollover activity tends to vary by investor age. Younger investors were more likely to have rollovers, with 27 percent of traditional IRA investors aged 25 to 29 having rollovers in 2012, compared with 5 percent of traditional IRA investors aged 70 to 74. In fact, the only exception to the general pattern of declining rollover incidence as age increases is among investors aged 60 to 64. While 8 percent of traditional IRA investors aged 55 to 59 had rollovers in 2012, nearly 10 percent of traditional IRA investors aged 60 to 64 had rollovers in 2012, likely due in part to investors in this age group retiring and rolling their retirement accounts into IRAs. *See* Figure 3.2 in Holden and Bass, "The IRA Investor Profile: Traditional IRA Investors' Activity, 2007–2012," *ICI Research Report* (March 2014), available at www.ici.org/pdf/rpt_14_ira_traditional.pdf.

Figure 9

Traditional IRA Investors with Rollovers in 2012 by Investor Age

Share of traditional IRA investors with rollovers[1] and amount of rollovers to traditional IRAs by investor age, 2012



[1]Traditional IRA investors with rollovers are traditional IRA investors aged 25 to 74 who had rollovers into their traditional IRAs in tax year 2012.
Source: The IRA Investor Database™

Rollover amounts tend to rise with investor age, reflecting the longer time horizon older investors have had to build retirement plan accumulations.[23] The median rollover amount among traditional IRA investors aged 25 to 29 in 2012 was $3,180, rising to $59,070 for traditional IRA investors aged 65 to 69, before falling slightly to $54,470 for investors aged 70 to 74.[24] Although traditional IRA investors aged 50 to 74 accounted for about half of rollovers, more than three-quarters of the money rolled over in 2012 came from this group (Figure 9).

Rollovers into traditional IRAs covered a range of sizes. In 2012, 14 percent of traditional IRA rollovers were less than $2,000, and another 14 percent were $2,000 to less than $5,000 (Figure 10).

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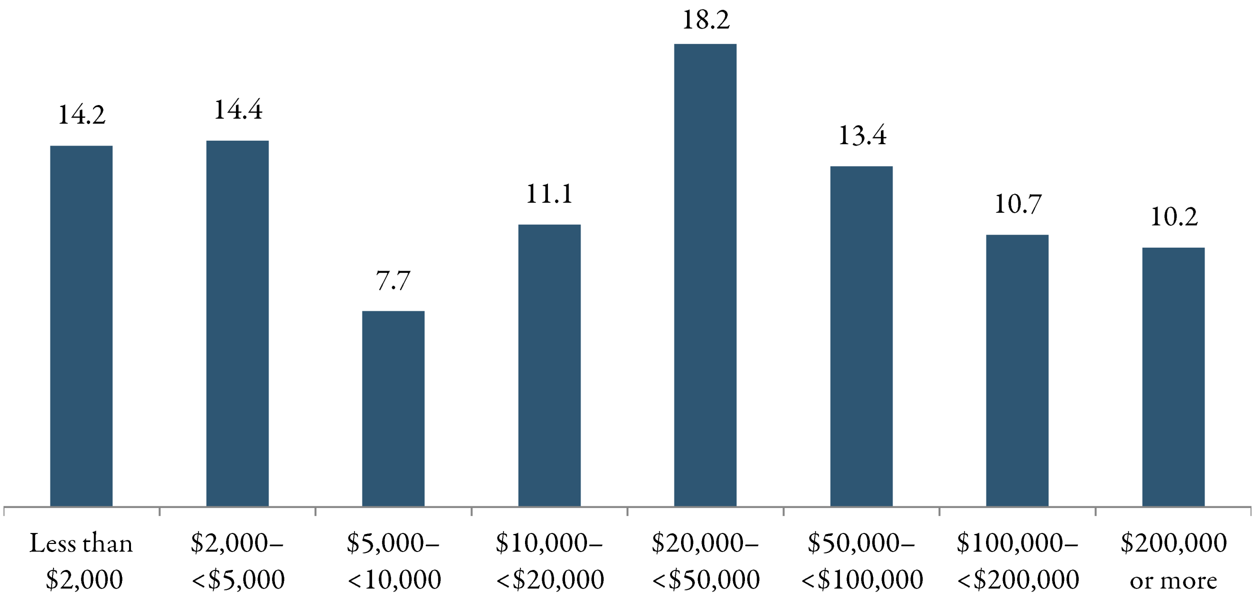
[23] The EBRI/ICI 401(k) database finds that 401(k) balances tend to rise with investor age and job tenure. *See* Holden, VanDerhei, Alonso, and Bass, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2012," *ICI Research Perspective* 19, no. 12, and *EBRI Issue Brief*, no. 394 (December 2013), Washington, DC: Investment Company Institute and Employee Benefit Research Institute, available at www.ici.org/pdf/per19-12.pdf.

[24] *See* Figure 3.3 in Holden and Bass, "The IRA Investor Profile: Traditional IRA Investors' Activity, 2007–2012," *ICI Research Report* (March 2014), available at www.ici.org/pdf/rpt_14_ira_traditional.pdf.

Some of these rollovers could have been balances defaulted into traditional IRAs upon separation from the employer, given their size.[25] At the other end of the spectrum, 11 percent of rollover amounts were $100,000 to less than $200,000, and 10 percent were $200,000 or more.

Figure 10
Rollovers Cover a Range of Sizes
Percentage of traditional IRA investors with rollovers in specified ranges, 2012



Note: The sample is 0.9 million traditional IRA investors with rollovers in 2012. Percentages do not add to 100 percent because of rounding.
Source: The IRA Investor Database™

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[25] For a discussion of evidence of default rollover activity based on the asset allocation of such small traditional IRA balances, *see* Holden and Bass, "The IRA Investor Profile: Traditional IRA Investors' Activity, 2007–2012," *ICI Research Report* (March 2014), available at www.ici.org/pdf/rpt_14_ira_traditional.pdf. Default rules governing rollovers from employer-sponsored retirement plans appear to have had a noticeable impact. Since 2005, employer-sponsored DC retirement plans that cash out balances of $5,000 or less when the employee separates from employment generally are required to roll over any account that is more than $1,000, but no more than $5,000, into an IRA unless the plan participant affirmatively chooses otherwise. For more information on the rules governing automatic rollovers, *see* U.S. Department of Labor, 2004, *Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor*; Final Rule, 29 C.F.R. Part 2550 (September 28, 2004), available at www.dol.gov/ebsa/regs/fedreg/final/2004021591.pdf. The Plan Sponsor Council of America (PSCA) in their most recent plan survey finds that 10.7 percent of plans retain the account in the plan regardless of balance; 46.1 percent of plans retain the account in the plan if the balance is more than $5,000, transfer the balance to an IRA if the balance is between $1,000 and $5,000, and pay out balances less than $1,000; and 43.2 percent of plans retain the account in the plan if the balance is more than $1,000 and pay out balances less than $1,000. *See* Plan Sponsor Council of America, *56th Annual Survey of Profit Sharing and 401(k) Plans: Reflecting 2012 Plan Experience*, Chicago, IL: Plan Sponsor Council of America (2013).

D. **Investments Held in IRAs and Mutual Fund Expense Ratios**

ICI estimates that IRA assets totaled $5.6 trillion at year-end 2012, with 44 percent, or $2.5 trillion, invested in mutual funds.[26] At year-end 2012, $0.4 trillion (7 percent of total IRA assets) was invested in annuity products, $0.5 trillion (9 percent of the total) was invested in deposits at commercial banks and savings institutions, and $2.2 trillion (40 percent of the total) was invested in other assets, which could include exchange-traded funds (ETFs), stocks, bonds, and Treasury securities, among other investments. Within the mutual fund component, equity funds represented the bulk of mutual fund assets held in IRAs. At year-end 2012, 51 percent of mutual fund assets held in IRAs were equity funds (*i.e.*, domestic equity and foreign equity funds), balanced funds were 21 percent of IRA mutual fund assets, bond funds accounted for 20 percent, and money market funds were 9 percent.[27]

It is not possible for ICI to assess the total cost of owning IRAs. IRA assets are invested through a variety of venues, and many of the assets (56 percent) in IRAs are in accounts for which ICI does not have fee information. In addition, financial professional assistance can be paid for through a variety of different arrangements. It is possible, however, for ICI to analyze the expense ratios of the mutual fund assets held in IRAs.

Looking at Mutual Fund Expense Ratios

Mutual funds incur a variety of expenses, including expenses relating to portfolio management, fund administration and compliance, shareholder services, recordkeeping, distribution charges, and other day-to-day operations.[28] Various factors affect a mutual fund's expense ratio, including its investment objective, its level of assets, the average account balance of its investors, and the range of services it offers. Mutual funds are required by law to disclose their expenses and report fund performance net of expenses. Fund expenses are reported as a percentage of fund assets, and this ratio is referred to as the fund expense ratio.

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[26] *See* Table 6 in Investment Company Institute, "The U.S. Retirement Market, Fourth Quarter 2013" (March 2014), available at www.ici.org/info/ret_13_q4_data.xls.

[27] *See* Table 15 in Investment Company Institute, "The U.S. Retirement Market, Fourth Quarter 2013" (March 2014), available at www.ici.org/info/ret_13_q4_data.xls.

[28] For further description of mutual fund fees, *see* U.S. Securities and Exchange Commission, "Mutual Fund Fees and Expenses;" available at www.sec.gov/answers/mffees.htm, and Investment Company Institute, *2014 Investment Company Fact Book: A Review of Trends and Activity in the Investment Company Industry* (2014), available at www.ici.org/pdf/2014_factbook.pdf.

As part of ongoing research, ICI maintains a database to study trends in mutual fund expense ratios.[29] In addition, ICI separately tracks IRA holdings of mutual funds.[30] The analysis here combines the results of these studies in order to examine the average fund expense ratio—calculated as an asset-weighted average—that investors incurred on mutual funds held in IRAs at year-end 2012. Under this approach, funds with larger shares of IRA mutual fund assets carry a proportionately greater weight in the summary fund expense ratio measure than do less widely-held funds. This measure provides an aggregate estimate of what IRA mutual fund owners as a group paid, on average, to invest in mutual funds through their IRAs. This analysis finds that IRA mutual fund owners tend to concentrate their assets in lower-cost mutual funds.

IRA Owners Hold Lower-Cost Mutual Funds

Equity funds. Fifty-one percent of IRA assets invested in mutual funds were invested in equity funds at year-end 2012. Mutual fund shareholders generally are sensitive to fund expense ratios.[31] New sales and assets tend to be concentrated in lower-cost funds, providing a market incentive for mutual funds to offer their services at competitive prices.[32]

Like mutual fund shareholders generally, IRA owners tend to hold lower-cost mutual funds. The average fund expense ratio incurred by IRA investors in equity funds was 0.78 percent (or 78 basis points) in 2012, much lower than the 1.40 percent simple average for all equity funds (Figure 11). The industrywide asset-weighted average for equity funds was 0.77 percent in 2012.

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[29] For the most recent report on mutual fund expenses and fees, *see* Gallagher, "Trends in the Expenses and Fees of Mutual Funds, 2013," *ICI Research Perspective* 20, no. 2 (May 2014), available at www.ici.org/pdf/per20-02.pdf.

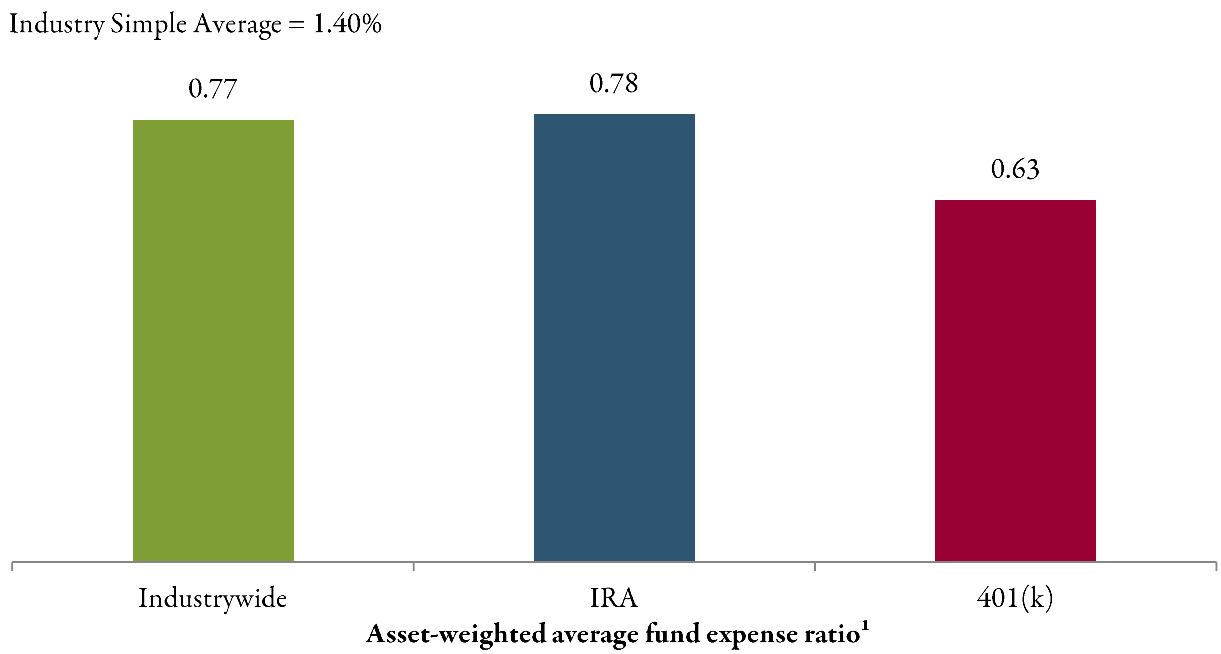
[30] *See* note 27.

[31] In February–March 2006, ICI conducted an in-home survey of 737 randomly selected fund owners who had purchased shares of equity, bond, or hybrid mutual funds outside workplace retirement plans in the preceding five years (*see* Investment Company Institute, *Understanding Investor Preferences for Mutual Fund Information* (2006), available at www.ici.org/pdf/rpt_06_inv_prefs_full.pdf). On average, recent mutual fund investors considered nine distinct items of information about a mutual fund before purchasing shares, five of which they considered "very important" to making the final decision to invest in a fund. Seventy-four percent of recent mutual fund investors wanted to know about a fund's fees and expenses before purchasing shares.

[32] *See* Investment Company Institute, *2014 Investment Company Fact Book: A Review of Trends and Activity in the Investment Company Industry* (2014), available at www.ici.org/pdf/2014_factbook.pdf.

Mutual fund investors in 401(k) plans also have concentrated their assets in lower-cost funds. The average fund expense ratio incurred by 401(k) investors in equity funds was 0.63 percent in 2012.[33]

Figure 11
IRA Investors Concentrate Their Assets in Lower-Cost Equity Funds
Asset-weighted average fund expense ratio,[1] percent, 2012



[1]The asset-weighted average fund expense ratio is the mutual funds' expense ratios weighted by the assets of the type of account holder indicated. The fund expense ratio is reported as a percentage of fund assets.
Note: Figures exclude mutual funds available as investment options in variable annuities.
Sources: Investment Company Institute and Lipper

Expense ratios varied among the mutual funds that IRA owners hold. Three-quarters of IRA equity fund assets were invested in mutual funds with expense ratios less than 1 percent of assets at year-end 2012 (Figure 12). Twenty-two percent of IRA equity fund assets were in mutual funds with expense ratios less than 0.50 percent. Equity mutual fund assets of 401(k) investors also were concentrated in lower-cost funds; 84 percent of 401(k) equity fund assets were invested in mutual funds with expense ratios less than 1 percent at year-end 2012, with 35 percent in equity funds with expense ratios less than 0.50 percent.

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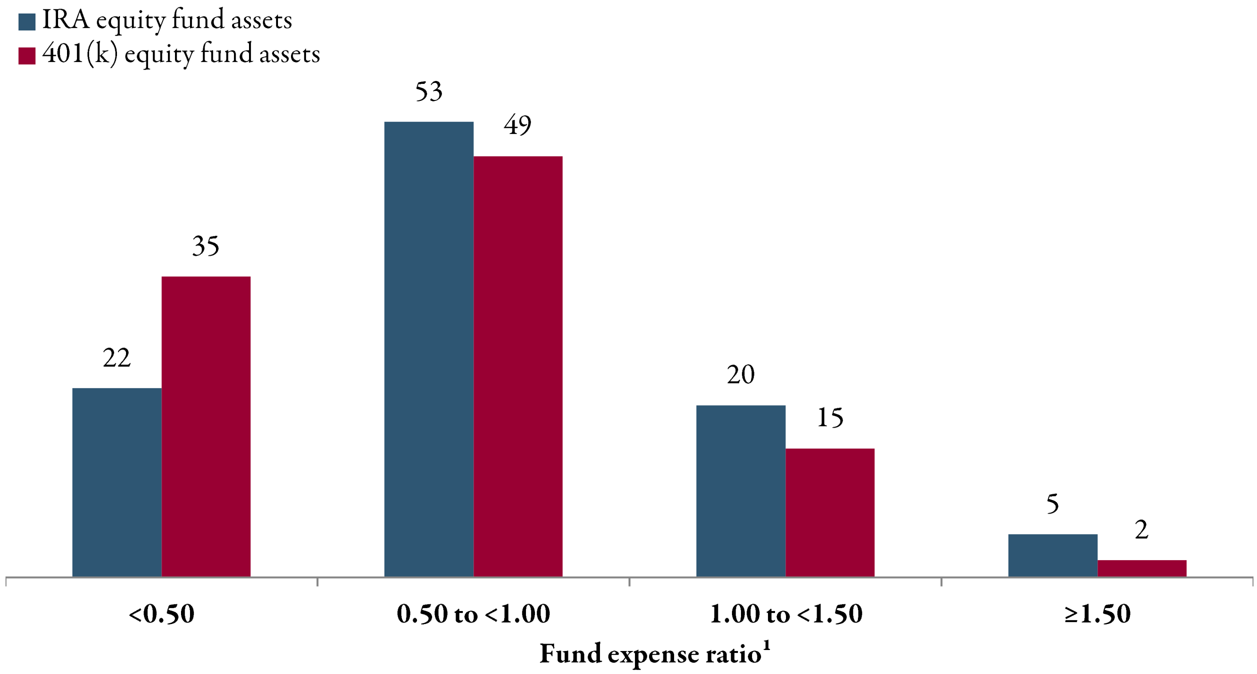
[33] For the complete report on mutual fund fees in 401(k) plans, *see* Collins, Holden, Chism, and Duvall, "The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2012," *ICI Research Perspective* 19, no. 4 (June 2013), available at www.ici.org/pdf/per19-04.pdf.

Figure 12
IRA and 401(k) Equity Mutual Fund Assets Are Concentrated in Lower-Cost Funds
Percentage of equity mutual fund assets, 2012



[1]The fund expense ratio which is reported as a percentage of fund assets includes fund operating expenses and the 12b-1 fee.
Note: Figure exclude mutual funds available as investment options in variable annuities. Percentages may not add to 100 percent because of rounding.
Sources: Investment Company Institute and Lipper

The lower average expense ratios incurred by 401(k) participants reflect many factors. For example, some plan sponsors choose to cover a portion of 401(k) plan costs.[34] Furthermore, many 401(k) plans have large average account balances, and such economies of scale help to reduce the expense ratios of the funds offered in these plans through availability of lower-fee share classes. Finally, unlike shareholders outside of 401(k) plans who typically pay for the assistance of a financial adviser when investing in mutual funds,[35] there is a more limited role for such financial adviser services inside

[34] *See* discussion in Collins, Holden, Chism, and Duvall, "The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2012," *ICI Research Perspective* 19, no. 4 (June 2013), available at www.ici.org/pdf/per19-04.pdf.

[35] Among mutual fund shareholders owning funds outside of DC plans, 81 percent owned fund purchased from an investment professional. Investment professionals include registered investment advisers, full-service brokers, independent financial planners, bank and savings institution representatives, insurance agents, and accountants. *See* Figure 8 in Burham, Bogdan, and Schrass, "Characteristics of Mutual Fund Investors, 2013," *ICI Research Perspective* 19, no. 10 (October 2013), available at www.ici.org/pdf/per19-10.pdf. For additional information on mutual fund owners' use of investment professionals, *see* Bogdan and Schrass, "Profile of Mutual Fund Shareholders, 2013," *ICI Research Report* (February 2014),

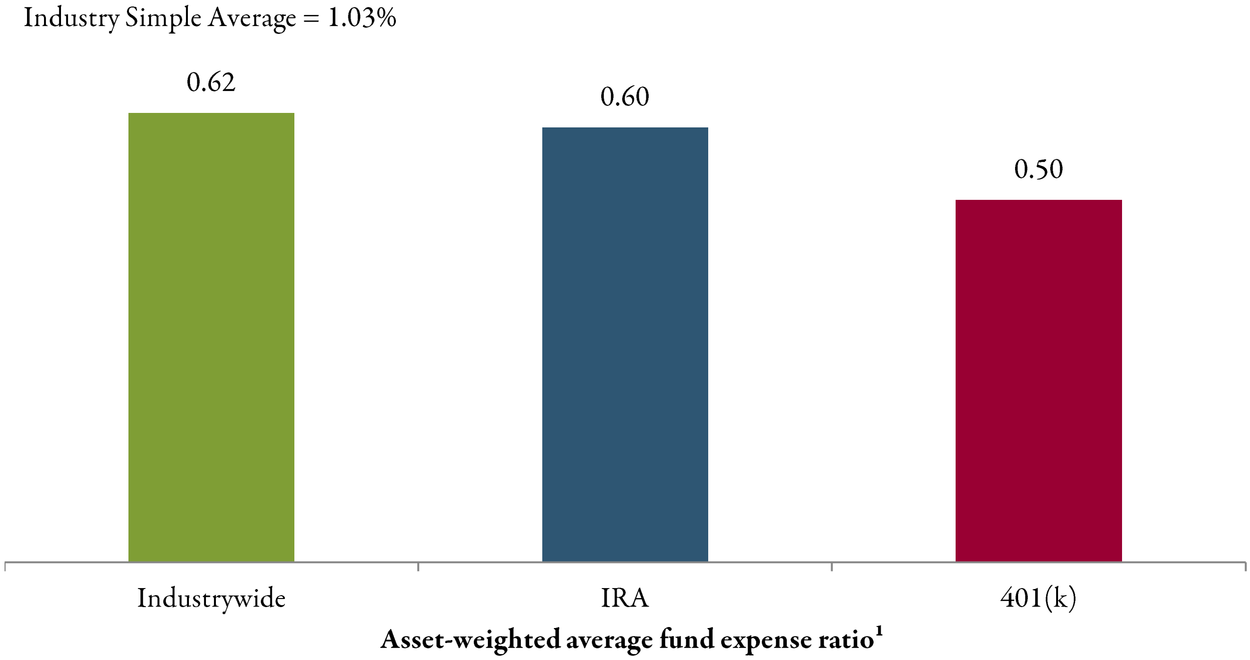
these plans. Many IRA owners, like many retail mutual fund investors, solicit financial advice when investing. For example, among traditional IRA–owning households with rollovers, in selecting the initial asset allocation of rollover assets in traditional IRAs, 10 percent of traditional IRA–owning households with rollovers indicated that their professional financial adviser selected the investments, and 48 percent indicated they worked together with a professional financial adviser to select the investments.[36]

Bond funds. Twenty percent of IRA mutual fund assets were invested in bond funds at year-end 2012, and IRA bond fund investors also have concentrated their assets in lower-cost bond funds. At year-end 2012, IRA bond fund investors incurred an average expense ratio of 0.60 percent, compared with the 1.03 percent industrywide simple average (Figure 13). As was the case with equity funds, the asset-weighted average fund expense ratio for IRA bond fund investors is close to the asset-weighted industry average (0.62 percent).

available at www.ici.org/pdf/rpt_14_profiles.pdf, and Leonard-Chambers and Bogdan, "Why Do Mutual Fund Investors Use Professional Financial Advisers?" *Investment Company Institute Fundamentals* 16, no. 1 (April 2007), available at www.ici.org/pdf/fm-v16n1.pdf; and Schrass, "Ownership of Mutual Funds Through Investment Professionals, 2012." *ICI Research Perspective* 19, no. 2 (February 2013), available at www.ici.org/pdf/per19-02.pdf2013.

[36] Forty percent of traditional IRA–owning households with rollovers indicated that the household selected the investments without outside help and the remaining 2 percent of households owning traditional IRAs that include rollovers indicated that someone else selected the initial asset allocation of the rollover assets in the traditional IRA. *See* Holden and Schrass, "The Role of IRAs in U.S. Households' Saving for Retirement, 2013," *ICI Research Perspective* 19, no. 11 (November 2013), available at www.ici.org/pdf/per19-11.pdf.

Figure 13
Expense Ratios for Bond Mutual Funds
Asset-weighted average fund expense ratio,[1] percent, 2012



[1]The asset-weighted average fund expense ratio is the mutual funds' expense ratios weighted by the assets of the type of account holder indicated. The fund expense ratio is reported as a percentage of fund assets.
Note: Figures exclude mutual funds available as investment options in variable annuities and tax-exempt mutual funds.
Sources: Investment Company Institute and Lipper

II. Legal Requirements Relating to Distribution and Rollover Decisions

In this study, we understand the Advisory Council will examine the types of communications participants receive from their employers when leaving employment, and whether the quality of participants' decision-making can and should be enhanced by communication or other plan design features from the plan sponsor. The Council indicated that its examination of this topic will include evaluation of the differences between the employer- and non-employer-based system and whether there are positive steps that can be taken to further encourage individuals to stay in the system, where it makes sense for them to do so. This section of testimony addresses these questions by describing the Internal Revenue Code's (the "Code's") comprehensive disclosure regime covering both plan sponsors and IRA providers with regard to information provided for distribution and rollover decisions. We also describe relevant requirements pertaining to making distributions (including rollovers) upon separation from service and recent IRS guidance relating to the acceptance of rollover contributions by tax-qualified plans. Finally, we recommend DOL guidance to facilitate greater assistance to participants around making distribution decisions.

Given the important role that advice plays in distribution decisions, as discussed earlier, it bears mentioning that financial planners, advisers or brokers may have fiduciary obligations or be subject to other rules of practice with regard to advice to clients on distribution and rollover decisions.[37] We understand that these types of external communications are outside the scope of this study.

A. Mandatory Distribution Rules

When an employee terminates his or her employment with the plan sponsor, the employee may have a choice of whether to leave his or her account balance (or accrued benefit in the case of a DB plan) in the plan,[38] take a distribution in cash, or roll over the account or accrued benefit to another plan or IRA. If the plan provides that small accounts or accrued benefits (*i.e.*, present value of $5,000 or less) will be distributed without the consent of the participant, the employer or plan administrator must automatically roll over the balance into an IRA if the balance exceeds $1,000, absent other direction from the participant.[39] With respect to rollovers of amounts in excess of $1,000, the Department has provided a safe harbor under which fiduciaries will be deemed to have satisfied their fiduciary duties under section 404(a) of ERISA with respect to both the selection of an IRA provider and the investment of funds within the IRA in connection with an automatic rollover of a mandatory distribution.[40] Conditions of the safe harbor include that the rolled-over funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return; that the investment product selected for the rolled-over funds shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount initially invested in the product; and that all fees and expenses of the IRA (including investments) shall not exceed the fees and expenses charged by the IRA provider for comparable IRAs established for reasons other than the receipt of an automatic rollover distribution. Plan participants must receive an explanation of the plan's automatic rollover provisions, including information on the investment of rolled-over funds, in an SPD (summary plan description) or SMM (summary of material modifications).

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[37] For example, investment advisers are regulated and subject to fiduciary obligations to clients under the Investment Advisers Act of 1940 and/or under state adviser laws. These standards—meant to prevent advisers from overreaching or taking advantage of a client—require them to act in the client's best interest. The Advisers Act also imposes obligations on advisers relating to recordkeeping, custodial, reporting and other regulatory responsibilities.

[38] Plans are permitted to require distribution of a separating participant's account if the participant has reached the plan's normal retirement age (or age 62, if later). Treas. Reg. §1.411(a)-11(c)(4).

[39] Internal Revenue Code §401(a)(31)(B).

[40] Labor Reg. §2550.404a-2.

B. Disclosures from Plan Sponsors

When a participant is eligible to receive a distribution, the plan administrator must furnish certain notices that relate to the decision of whether to take a distribution and what to do with it.

402(f) notice

Under Code section 402(f), plan administrators of qualified plans must furnish a written notice to any participant receiving an eligible rollover distribution (which generally would include a lump-sum distribution) describing the rules for direct rollovers, income tax withholding on amounts not directly rolled over, tax treatment of these amounts, and special rules that may apply after amounts are directly rolled over into another plan or IRA. Under IRS regulations,[41] the notice must be given within a reasonable period of time before making the distribution, which would be no less than 30 days and no more than 180 days before the date of distribution (although participants can waive the 30 day period). The IRS offers a model notice that plan administrators can use and tailor to their own plans.[42] The model notice states that it is intended to help the participant decide whether to roll over the distribution. It explains that the IRA or plan receiving a rollover will determine the available investment options, fees, and payment rights. The notice also explains the different tax rules that will apply if a distribution from a plan is rolled over into an IRA, such as the additional exceptions to the early distribution penalty (*e.g.*, qualified higher education expenses and qualified first-time home purchases) and the responsibility to track any after-tax amounts in the IRA.

Notice of consequences of failure to defer

Under IRS regulations,[43] for any distribution requiring the participant's consent, the participant first must be informed of the right, if any, to defer receipt of the distribution from the plan. The Pension Protection Act of 2006 (PPA) directed the IRS to modify this regulation to add a description of the consequences of failing to defer receipt. Regulations proposed by the IRS in late 2008 are pending.[44] As the actual requirement to provide this description became effective for notices provided in plan years beginning after December 31, 2006, plans may rely on the proposed regulations until final regulations are effective. Under the proposed regulations, the requirement to inform

[41] Treas. Reg. §1.402(f)-1, A-2 (as modified by section 1102 of PPA).

[42] The IRS's model notice is available at www.irs.gov/pub/irs-drop/n-09-68.pdf. In 2009, the IRS revised the model notice to simplify the presentation of information to participants.

[43] Treas. Reg. §1.411(a)-11.

[44] Proposed Treas. Reg. §1.411(a)-11.

participants of the consequences of failing to defer receipt of a distribution would be satisfied by providing participants with the following information:

- Tax consequences: Implications on taxable income of taking an immediate distribution that is not rolled over (or not eligible to be rolled over) as compared to deferring distribution; possible application of the 10 percent early distribution penalty tax under Code section 72(t); and, in the case of a DC plan, loss of the opportunity for future tax-favored treatment of earnings if the distribution is not rolled over (or not eligible to be rolled over) to an eligible retirement plan.

- DB plan options: A statement of the amount payable to the participant under the normal form of benefit both upon immediate commencement and upon deferred commencement (assuming no future benefit accruals).

- DC plan investment options: A statement that some currently available investment options in the plan may not be generally available on similar terms outside the plan and contact information for obtaining additional information on the general availability outside the plan of currently available investment options in the plan.

- DC plan investment fees: A statement that fees and expenses (including administrative or investment-related fees) outside the plan may be different from fees and expenses that apply to the participant's account and contact information for obtaining additional information on the fees and expenses that apply to the participant's account.

- Important plan terms: An explanation of any provisions of the plan that could reasonably be expected to materially affect a participant's decision whether to defer receipt of the distribution (such as loss of eligibility for retiree health coverage or early retirement subsidies if the participant elects not to defer a distribution).

Although this information must appear together, the proposed regulations would allow the notice to cross reference notices or other information provided or made available to a participant, as long as the participant is informed how the referenced information may be obtained without charge and the notice explains why the referenced information is relevant to a decision to defer. The notice must be provided no less than 30 days and no more than 180 days before the date the distribution commences (although participants can waive the 30 day period).

C. **Rollovers to New Employer Plans**

As noted above, participants who are terminating employment may be interested in rolling over their account balance or accrued benefit from their former employer's plan into their new employer's plan. Under Code section 401(a)(31), a tax-qualified plan must offer direct rollover of an eligible rollover distribution to another eligible retirement plan. Pursuant to IRS regulations, to accept a rollover, the plan administrator for the receiving plan should reasonably conclude that the contribution is a valid rollover contribution.[45] Although some plans may not accept rollover contributions from other plans (arguably concerned about potential liability for doing so), we believe the majority of DC plans do accept rollover contributions.[46] The IRS recently published guidance to facilitate rollovers into qualified plans from other qualified plans and IRAs. Revenue Ruling 2014-09[47] is intended to make it easier for a plan administrator for a receiving plan to conclude that an intended rollover contribution is a valid rollover contribution and, therefore, reduce the perceived administrative burden and liability exposure that many argue serves to discourage rollovers to plans.[48]

The ruling presents two factual situations, one situation involving a rollover from one employer plan into another employer plan and the other situation involving a rollover from a traditional IRA into an employer plan. In each case, the trustee for the distributing plan or IRA issues a check payable to the trustee for the receiving plan for the benefit of the named employee, and gives the check to the employee. In the first situation (plan-to-plan rollover), the employee provides the receiving plan with the name of his prior employer and delivers the check, with an attached check stub that identifies the distributing plan as the source of the funds, to the plan administrator. The receiving plan administrator checks the DOL's EFAST2 database for the most recent Form 5500 filed for the distributing plan,

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[45] Treas. Reg. §1.401(a)(31)-1, Q&A-14.

[46] For example, the PSCA in their most recent plan survey finds that 98.3 percent of 401(k) plans accept rollovers from other plans. *See* Plan Sponsor Council of America, *56th Annual Survey of Profit Sharing and 401(k) Plans: Reflecting 2012 Plan Experience*, Chicago, IL: Plan Sponsor Council of America (2013).

[47] Revenue Ruling 2014-09 is available at www.irs.gov/pub/irs-drop/rr-14-09.pdf. A news release is available at www.treasury.gov/press-center/press-releases/Pages/jl2345.aspx.

[48] *See* "401(k) Plans, Labor and IRS Could Improve the Rollover Process for Participants," *Report of the U.S. Government Accountability Office*, GAO-13-30 (March 2013), available at democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/4.2.2013-GAO-401K.pdf. The Revenue Ruling addresses many of the issues raised in the GAO report, particularly the administrative difficulties participants can encounter in attempting to roll over savings into a new plan and the consequences of a plan accepting a rollover contribution later determined to be invalid.

which indicates that the plan is intended to be tax-qualified. In the second situation (IRA-to-plan rollover), the employee delivers the check, including a check stub that identifies the IRA of the named employee as the source of the funds, to the receiving plan administrator. In both cases, the employee certifies that the distribution includes no after-tax amounts (which are not accepted by the receiving plan). Based on these facts, the ruling concludes that in each situation, absent any evidence to the contrary, the plan administrator for the receiving plan may reasonably conclude that the potential rollover contribution is a valid rollover contribution.

The ruling indicates that the outcome would be the same if there had been no check stub identifying the source of the funds, as long as the check itself identified the source of the funds as the distributing plan or IRA. In addition, the outcome would be the same if the rollover had been accomplished through a wire transfer or other electronic means, provided that the plan administrator or trustee for the distributing plan or IRA had communicated to the receiving plan administrator the same information regarding the source of the funds. Finally, the ruling states that if it is later determined that the amount rolled over is an invalid rollover contribution, the amount rolled over plus any attributable earnings must be distributed to the employee within a reasonable time after such determination. This guidance should help make plan administrators more comfortable accepting rollover contributions into their plans.

D. Rollovers to IRAs

In some circumstances, a rollover to an IRA may make more sense than keeping money in a prior employer's plan or rolling over into a new employer's plan. To assist the Advisory Council in evaluating the difference between the employer-based system and the non-employer-based system, this section provides an overview of how IRAs are regulated. IRA providers are subject to certain disclosure obligations under the Internal Revenue Code, as described below. Entities that serve as custodians to IRAs also are regulated depending on the type of entity. The FDIC regulates bank custodians and the IRS regulates non-bank custodians. Any entity that is not a bank must be approved by the IRS to serve as a non-bank trustee or custodian for IRAs or other types of retirement accounts. A prospective non-bank trustee or custodian must file an application demonstrating that it will meet certain regulatory requirements[49] including that it has the ability to act within accepted rules of fiduciary conduct (demonstrating business continuity, an established location, fiduciary experience, fiduciary procedures, and financial responsibility); the capacity to account for the interests of a large number of individuals; and the fitness to handle retirement funds.

[49] Treas. Reg. §1.408-2(e)(2) through §1.408-2(e)(7).

Regardless of the type of IRA provider, IRA owners must receive certain disclosures at establishment of the IRA and periodically thereafter. IRS regulations require IRA trustees/issuers to issue a disclosure statement and a copy of the governing instrument (*e.g.*, the custodial agreement) to the owner at establishment of the IRA (and update these later with any amendments).[50] The disclosure statement must set forth in nontechnical language concise explanations of the requirements of Code section 408, the income tax consequences of establishing the account including the deductibility of contributions and tax treatment of distributions, the circumstances under which the account can be revoked, and certain statements regarding the consequences of engaging in a prohibited transaction, borrowing money from the account, taking early distributions, not taking required minimum distributions, making excess contributions, and other matters. The disclosure statement must also contain a financial disclosure about the potential value of the account at various points in the future, with different rules depending on whether the amount is guaranteed, a reasonable projection of growth can be made, or no amount is guaranteed and no projection can be made (*i.e.*, a mutual fund investment or variable annuity). If no amount is guaranteed and no projection can be made, the financial disclosure is required to assume level annual contributions of $1,000 (or a rollover contribution of that amount, or both) and is required to describe in nontechnical language (1) each type of charge (and amount) which may be made against a contribution, (2) the method for computing and allocating annual earnings, and (3) each other charge which may be applied to the account in determining the net amount of money available to the owner (and method for computing such charges).

Beyond these requirements, particular investment products may have their own disclosure obligations. Mutual funds offered in IRAs, for example, are subject to the requirements of the federal securities laws, including the prospectus requirements of the Securities Act of 1933. There are also several annual reports that must be provided to IRA owners and the IRS, pursuant to IRS regulations and related guidance.[51] The trustee/issuer must report to the owner the fair market value of the IRA each year, as of calendar year end, by January 31 of the following year and any contributions made to the IRA for that calendar year by May 31 of the following year. Contribution and fair market value information is reported to the IRS on Form 5498, a copy of which can be used to satisfy the reporting requirements to the owner.[52] Distributions from IRAs are reported to both the owner and the IRS on Form 1099-R.[53] Finally, IRA trustees and issuers must also provide the owner with a notice regarding

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[50] Treas. Reg. §1.408-6(d)(4).

[51] Treas. Reg. §1.408-5.

[52] IRS Form 5498 is available at www.irs.gov/pub/irs-pdf/f5498.pdf.

[53] IRS Form 1099-R is available at www.irs.gov/pub/irs-pdf/f1099r.pdf.

required minimum distributions, if applicable, by January 31 of each year in which the owner is age 70-1/2 or older.[54]

E. ICI Recommendations

There are many factors that may enter into a participant's decision to keep his or her assets in a previous employer's plan or to roll over those assets into an IRA or a new employer's plan. These include, but are not limited to, the range of investments available in the plan and the fees for those investments, as compared to the range of investments and fees available in an IRA or new employer's plan; whether the participant has an immediate or on-going need for advice and where that advice might be available; any benefits of consolidating retirement assets in a single vehicle; the availability of Roth treatment; and any perceived desirability of maintaining the ability to take a plan loan.

Because there is no one-size fits all solution to managing assets at job change or retirement, it is important that participants understand the various options available to them. In our view, participants are well-served by the disclosure regime described above. In addition, many plans voluntarily offer education or advice programs that can assist participants in deciding what action to take in connection with a retirement account upon leaving employment or retiring. Regulatory authorities also can provide information to assist participants with the rollover decision.[55]

To that end, the Department can take steps to further increase the availability of education to participants making decisions at job change or retirement. For example, the Department may want to consider developing additional educational materials to help participants with distribution decisions at job change and retirement and make these materials prominent and accessible.[56] A more impactful step would be for the Department to extend Interpretive Bulletin 96-1 ("IB 96-1"), making it clear that plan sponsors and service providers may convey the general advantages and disadvantages of various options for distribution without triggering fiduciary liability. This would likely encourage more plans to offer educational tools geared to distribution decisions.

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[54] Treas. Reg. §1.408-8, Q&A 10; Notice 2002-27, 2002-1 C.B. 814.

[55] For example, the Securities and Exchange Commission has an investor education series that touches upon investing in IRAs, and FINRA offers information as well. *See* FINRA, "The IRA Rollover: 10 Tips to Making a Sound Decision," available at www.finra.org/Investors/ProtectYourself/InvestorAlerts/RetirementAccounts/P436001 and FINRA, "Smart 401(k) Investing—Moving Your 401(k)," available at www.finra.org/investors/smartinvesting/retirement/smart401kinvesting/moving/p125502.

[56] For an example of current educational material developed by DOL, *see, e.g.*, "Taking the Mystery out of Retirement Planning," available at www.dol.gov/ebsa/pdf/nearretirement.pdf.

Expand Interpretive Bulletin 96-1

IB 96-1 currently provides important guidance on the provision of investment-related education and information to participants and beneficiaries in participant-directed individual account plans. Persons who solely provide information covered by IB 96-1 are deemed not to be "fiduciaries" under ERISA and therefore are not exposed to liability for the provision of investment information. IB 96-1 currently applies only to the following types of information provided to participants in participant directed plans –

- Plan information (relating to benefits of participating, plan terms and investment alternatives),
- General financial and investment information,
- Asset allocation models, and
- Interactive investment materials (such as questionnaires, worksheets and software that can assess future retirement needs and the impact of different asset allocations on retirement income).

IB 96-1 has resulted in plan sponsors and service providers providing investment education and information to participants and beneficiaries to assist them in making more informed decisions with respect to their individual accounts. These educational and informational tools, however, are focused primarily on the accumulation phase and not the de-accumulation phase of retirement planning.

Eighteen years have passed since DOL issued IB 96-1. The guidance should be updated in a tailored way to expand the types of education and information (*e.g.*, distribution and retirement income information) that may be provided to participants.[57] Expanding IB 96-1 to cover distribution decisions and retirement income approaches would be simple and logical, and would have the same positive impact on the provision of educational materials geared toward the distribution phase as the original IB 96-1 had on provision of investment education materials generally.

[57] Although beyond the scope of the topic currently under consideration by the Advisory Council, ICI supports additional clarification and expansion of IB 96-1 to other areas. For example, it is unclear whether IB 96-1 currently covers certain types of arrangements (such as IRAs) where investment education is important and the IB does not cover education or information provided to plan sponsors and other fiduciaries. To that end, we support clarification that the educational information and materials described in IB 96-1 may be provided to owners of individual plans described in Code sections 4975(e)(1)(B) through (G) (IRAs, Archer MSAs, HSAs, and Coverdell educational savings accounts) and clarification to allow service providers to provide investment education and information to plan sponsors and other fiduciaries (*e.g.*, plan committees), without such communications being deemed fiduciary investment advice under ERISA.

More specifically, DOL should clarify that information, materials, and tools that inform a participant or beneficiary about distribution options and income in retirement shall not be considered investment advice for purposes of section 3(21)(A)(ii) nor a "recommendation" for purposes of 29 C.F.R. § 2510.3-21 (or any successor regulation), including information, materials, and tools that are generally-applicable, plan specific or interactive; and should add illustrative examples covering the provision of information, materials, and tools regarding distribution options and income in retirement. Such information could include information on plan distribution options (*e.g.*, advantages and disadvantages; tax implications), general information about managing assets in retirement (*e.g.*, systematic withdrawals, managed payout products, annuities and other guaranteed products), retirement income models (*e.g.*, sample calculations) on distribution methods or income streams for hypothetical individuals, and interactive tools and services (*e.g.*, questionnaires, worksheets, software or similar materials or services) that allow a participant or beneficiary to estimate retirement income streams. Such information also could include information regarding potential rollovers from plan accounts to IRAs or other plans provided that such information describes: (i) general financial and investment information regarding plan options and IRAs; (ii) differences in investment options available to the participant or beneficiary under their current plan versus those available through an IRA; and (iii) fees attributable to the current plan versus those fees charged in the IRA or other plan. ICI outlined this recommendation in a letter to the Department dated February 18, 2011.[58]

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Americans are a mobile workforce and over the course of a career may generate multiple tax-deferred retirement accumulations. IRAs play an important role in U.S. households' saving for retirement. At the juncture of job change or retirement, employer-sponsored plan participants select among a range of options, making choices that reflect their individual needs. Before receiving a distribution from an employer plan, participants leaving employment must receive disclosures describing the tax consequences of distributions and what advantages may be lost by not leaving assets in the plan. Many individuals choose to roll over plan assets to another employer-sponsored plan or IRA. Households with rollovers in their traditional IRAs cite many reasons for making the rollover and consult multiple sources of information to research the rollover decision. IRA investors holding mutual funds have concentrated their mutual fund assets in lower-cost mutual funds in their IRAs. IRA

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[58] A copy of the letter is available at www.ici.org/pdf/27446.pdf, beginning on page 17.

providers also must meet various disclosure obligations to IRA owners, including explaining any fees associated with the IRA. While the required disclosures for plans and IRAs are robust, additional guidance from the Department on the use of educational materials and tools could further improve participants' information set when making distribution decisions from employer-sponsored plans.

We thank the Council for allowing us this opportunity to share our data and submit our views.