

Closing the Coverage Gap for Private Sector Workers: The U.S. Legislative and Policy Outlook

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Why Are States Acting?

- Top financial concern
- Too little saved and Social Security isn't enough
- More than half of private sector workers are uncovered
- Long-term budget consequences
- Long-term economic consequences
- No success at the national level

From Crisis to Opportunity

- For Innovation and Leadership Look to the States
- States Are Stepping Up To Address Retirement Security
- Goal To Design Simple, Low-Cost, Easily Accessible and Effective Savings Options

Would ERISA Apply to State-Sponsored Initiatives?

The \$64,000 Question

- ❑ ERISA is the federal law that governs employer-sponsored retirement plans.
- ❑ Uncertainty as to whether ERISA would apply to these state plans and many states specified in their enabling laws that they needed to be exempt from ERISA in order to move forward.
- ❑ President directed the U.S. Department of Labor (DOL) to issue rules to "Provide a Clear Path for States to Create Retirement Savings Programs" on July 31, 2015.
- ❑ DOL issued proposed regulatory changes in November 2015 with a goal to finalize by end of 2016 (end of the current Administration).
- ❑ Policies addressed the 2 approaches:
 1. "Non-ERISA" - Mandatory, auto-enroll IRAs
 - Proposed rule creates new safe harbor allowing state sponsored mandatory auto-enroll IRA to be exempt from ERISA.
 2. ERISA covered –MEPs, Prototype Plans, and Marketplace
 - Proposed guidance allows for state open Multiple Employer Plan (MEP) arrangement by the state to facilitate plan formation and take burden off of employers, but maintain ERISA protections.
 - ERISA applicability does not allow program to be mandatory for employers (An ERISA plan can be an option in a marketplace model).

8 States – 3 Models....So Far

1. IRAs (“non-ERISA”)
 2. 401(k)s (“ERISA”)
 3. Marketplace (“ERISA plans”)
- Future – Open Multiple Employer Plans (MEPs)?
 - Others to be designed consistent with federal Department of Labor guidelines (combinations)?

“SECURE CHOICE” (CA, CT, IL, MD, OR)

Auto-IRAs

- Mandatory, auto-enroll (with employee opt-out)
- Default contribution level
- Employer threshold/conditions for mandated participation
- Employer contributions generally not permitted (would trigger ERISA)
- Pooled and professionally managed funds
- Must keep fees “low” (.75%-1% range)
- Market analysis and legal analysis to guide design and management issues

MARKETPLACE (WA, NJ)

- Managed by State Agency.
- Voluntary participation for employers with less than 100 employees.
- SIMPLE IRA, myRA (Roth IRA), and payroll deduction IRAs and others can be added.
- Employer contributions encouraged (ERISA plans encouraged).
- To be built and funded by private sector.
- Participating providers must offer at least two product options.
- Fees cannot exceed 1%.

Massachusetts -401(K) for Non-Profits

- Managed by the State Treasurer
- Voluntary participation by non-profit employers with 20 or fewer employees
- Defined contribution 401(k) plans.
- Auto-enroll with opt-out.
- Default contribution at 6% or can choose 4% with auto-escalation up to 10%.
- Fees estimated to be well under 1% (20-80 bps).

State Implementation Issues & Challenges

- **Funding Availability**
 - Start up costs & role of private sector funding vs. government funding.
- **ERISA Uncertainty**
 - DOL proposed rulemaking encouraging but needs to be finalized to mitigate uncertainty and encourage future action.
- **Market & Feasibility Analyses Role in Plan Design**
 - Learning while implementing; doing it after plan design (IL, WA)
 - Demonstrates needs for flexibility in legislation to make necessary adjustments
- **Outreach to Stakeholders Important**
 - Business community, small businesses
 - Low-income advocacy groups
 - Financial services industry
 - Labor unions
- **Building and Managing the Program**
 - Establishing and communicating the rules and processes for employees & employers with respect to enrollment, opt-out, withholding and submitting contributions; selecting product options; rules for withdrawals and portability; investing and managing assets; consumer protection regulatory framework; deciding what operations to contract out vs. keep in house, etc.

Key Plan Design Considerations

- Voluntary or mandatory participation
- Role of employer and employer liability
- Types of employers and workers covered
- Default, minimum and maximum contribution levels
- Use of other tools and nudges such as auto-escalation
- Use of tax or other incentives

Key Plan Design Considerations

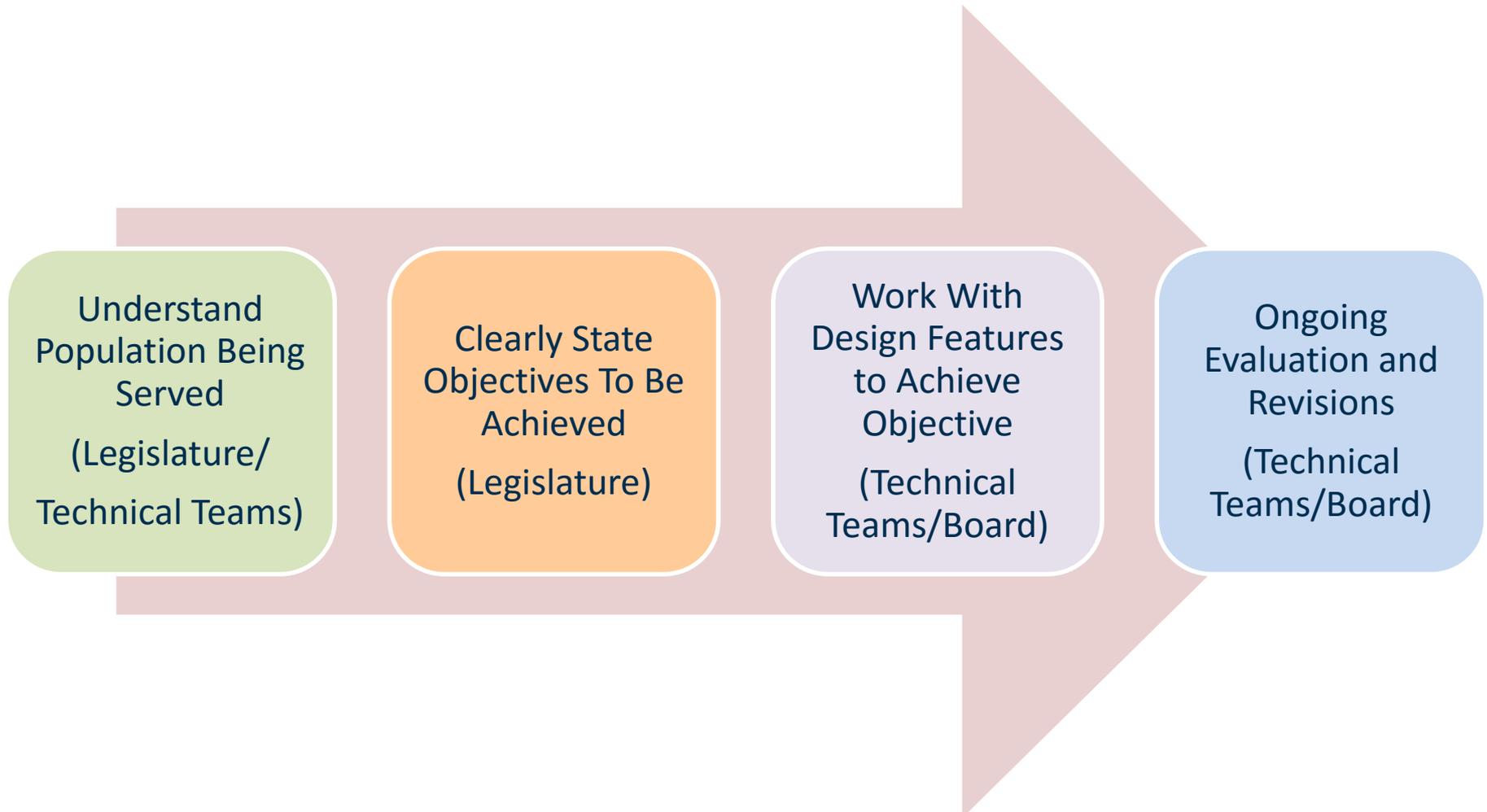
- Investment and management of assets
- Withdrawal rules and portability
- Guarantees
- Program administration and governance
- Program funding
- State liability

State Initiatives: Lessons Learned

- ✓ Understand the Target Population
 - Employees
 - Employers
 - “Gig economy” and the independent contractor
- ✓ Engage Stakeholders Early and Often
 - Visit with small businesses, low income advocacy groups, etc.
 - Take advantage of the resources of organizations committed to your goals.
 - Reach out to other states to learn from their experiences.
- ✓ Define Overall Policy Goals and Objectives
 - Understand what improving retirement security means (e.g., savings only or creating a stream of lifetime income, etc.).
- ✓ Design the Program to Meet Your Goals
 - Keep the design simple and easy to understand to boost participation.
- ✓ Be Prepared to Refine the Program Design
 - Avoid detailed design features in law to provide flexibility to adjust in implementation.
- ✓ Keep the Future in Mind – How Will Success Be Measured?
 - You can define it or others will define it for you.

Successful Reform Needs An Effective Sequencing Process

Merton-Muralidhar (*working paper*) examines this approach for uncovered workers' voluntary defined contribution (DC) reforms



States' Actions Reignite Push for National Solution

- Firm CEOs announcing their own proposals for consideration.
- Federal legislative proposals have been introduced for several years including this current Congress but no movement.
 - Launch of voluntary myRA program modest step
 - President's FY 2017 budget proposal supports open-MEPs, state initiatives
- Action in 2016 with election cycle is unlikely.

Outlook for 2016-17

- DOL finalizes ERISA safe harbor rulemaking for state programs.
- CA needs enabling legislation to launch program.
- Success of state initiatives reigniting interest in a national solution.
- Action and Trends for 2017 and beyond
 - Implementation work will be watched (WA,OR first)
 - State studies continue (VT & others)
 - Large cities exploring their own plans (NYC, Seattle, Philadelphia)
 - Evolution of models continues
 - Private sector innovation in response to state efforts
 - Public- private partnerships & additional reforms
 - How to expand focus from accumulation to decumulation and lifetime income (more DB attributes in a DC world)



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President Directs DOL to Issue Rules to "Provide a Clear Path for States to Create Retirement Savings Programs"

[More information here](#)

STATES AS INNOVATORS

WILL 2015 BE THE YEAR FOR STATE SPONSORED RETIREMENT SAVINGS PLANS? STATES ARE OFF TO A STRONG START!

NEWS - July 13th, 2015. At today's White House Conference on Aging, President Obama called on the U.S. Department of Labor and Secretary Tom Perez to issue by year's end a proposed set of rules "to clear a path for states to create retirement savings programs." The President indicated that he wants "to do everything we can to encourage more states to take this step."

[President Obama's blog post](#)

RETIREMENT SECURITY FAST FACTS

Download Retirement Security Talking Points!

FAST FACT SHEET #2

How Prepared Are Women For Retirement?

NEWS AND REPORTS

The Savings & Investment Bipartisan Tax Working Group Report, U.S. Senate Finance Committee, July 7, 2015

The Federal Reserve's 2014 Survey of Household Economics and Decisionmaking, May 2015

Simplifying Choices in Defined Contribution Retirement Plan Design, The Pension Research Council, May 2015

The 2015 Retirement Confidence Survey: Having a Retirement Savings Plan a Key Factor, EBRI, April 2015

An Analysis of the Illinois Secure Choice Savings Program, New America, April 1, 2015

State-run retirement programs picking up steam, BenefitPro, March 22, 2015

Congress Forms Retirement Caucuses, BenefitsPro, March 4, 2015

Americans' Views of the Retirement Crisis, National Institute on Retirement Security, March 2015 Report

LATEST FROM TWITTER

THE CENTER FOR RETIREMENT INITIATIVES (CRI) A RESOURCE FOR STATES

To foster state innovation by serving as a trusted public policy center that offers rigorous research, technical assistance, and effective advocacy for state-based retirement solutions by:

- ✓ Connecting state policymakers, scholars and industry experts.
- ✓ Sharing research, best practices and success stories with state policymakers.
- ✓ Analyzing legislative and regulatory developments and assisting with program design.
- ✓ Serving as a resource to all states and stakeholders in addressing the challenge of achieving retirement security for more Americans and promoting policies that will strengthen the economy.

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