



STATE OF CONNECTICUT

RETIREMENT SECURITY BOARD

CO-CHAIRS: STATE COMPTROLLER KEVIN LEMBO & STATE TREASURER DENISE L. NAPPIER

Staff Report to CRSB

Re: Conversation with U.S. Department of Labor Staff

July 1, 2015 CRSB Meeting

Board staff had a conference call with U.S. Department of Labor (DOL) staff, which included Carrianna Suiter, Director of Intergovernmental Affairs; Joe Canary, Deputy Director of Employee Benefits Security Administration; and Jim Craig, Office of the Solicitor.

Preemption and Next Steps

The U.S. DOL Secretary has been engaged in the state initiatives to address the national retirement savings gap. The Department's advice to states considering retirement security programs concerning ERISA preemption is that the issue needs to be ultimately decided by the courts. Any DOL guidance is not going to provide certainty to states, since such guidance is not determinative in the courts. However, the DOL is looking to make a decision in the next several weeks to determine its next steps. It wants to provide support and guidance to states, but needs to first determine the best approach: formal guidance, regulation making, or a legislative change.

Potential Solutions

One way that the DOL may be able to help is if the President's pilot waiver proposal is passed. DOL could then grant waivers by statute, with funding, in order to evaluate different kinds of plans. Not all of the waivers could be Secure Choice type plans. The Department would have to look at different initiatives, which would probably include 3 or 4 programs. Another solution could be for the DOL to issue additional regulatory guidance that either adds to, or is separate from, the safe harbor IRA regulatory guidance it issued back in 1998. The DOL could issue regulatory guidance of a safe harbor that is specific to these state initiatives.

Regulatory System

The DOL is concerned that IRAs are not in a very regulated space right now. There are not a lot of regulations on consumer protections tied to IRAs. The DOL is interested in a regulatory system that would provide greater consumer protections for IRAs and maybe imitate portions of ERISA. Enforcement of withholdings is important, in addition to investment information and disclosures, account disclosures, and delegation of management rules.

Mandatory ERISA Plans

The DOL also realizes that one of the primary concerns with the states offering ERISA covered plans is that any statute that mandates participation in an ERISA covered plan would be preempted, so the plans could only be voluntary. The DOL is considering whether this could be addressed. The staff emphasized that they are looking into solutions both at the federal and state levels.