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Retirement Policy

Auto-Enroll IRAs Likely to Be Best for State-Run Plans



By Sean Forbes

Oct. 7 — Workplace auto-enrollment IRAs are likely to be states' best approach in drafting retirement programs for private workers, a retirement policy analyst said during a symposium, but financial industry representatives questioned whether states should be in that business at all.

Workplace automatic enrollment individual retirement accounts and open multiple employer plans are the two main types of state retirement initiatives, David C. John, deputy director for the Retirement Security Project at the Brookings Institution, said Oct. 7 at a symposium held by the Washington public policy organization.

The auto-enrollment IRAs are likely to be more successful with fewer potential challenges under the Employee Retirement Income Security Act, John said, citing a paper he co-authored with William G. Gale, director of the Retirement Security Project.

MEPs, on the other hand, are ERISA-regulated, and can be 401(k) plans or accounts with features similar to 401(k)s that allow for employer contributions. However, if the states are allowed to offer MEPs, it's uncertain whether they could also require small businesses to offer their employees such plans, because the federal benefits law appears to prohibit states from mandating employers to offer an ERISA plan, John said.

John and his co-panelists at the symposium expect that the Department of Labor will address auto-enrollment and MEP issues when the agency issues guidance on state-run plans in the near future.

The DOL sent a proposed rule on state-run plans to the Office of Management and Budget for review in September (171 PBD, 9/3/15). President Barack Obama in July directed the department to develop such rules (134 PBD, 7/14/15).

About 55 million workers in the U.S. from ages 18 to 64 lack access to a workplace retirement plan, a problem that is especially pronounced among smaller employers, John said.

John is also senior strategic policy adviser with AARP's Public Policy Institute focusing on retirement saving and pensions, but said that he was speaking solely on his own behalf, and not on behalf of AARP.

Industry Criticism

The Securities Industry and Financial Markets Association is among several financial industry organizations that have been critical of the state-run retirement plan initiatives out of concern that they will be anti-competitive with private-sector providers.

Lisa Bleier, managing director and associate general counsel for federal government relations at SIFMA, said at the symposium that while most agree that solving the retirement crisis is important, "what we disagree with, though, is the states being necessarily the right place to find the answer."

Crucial issues that arise include portability among states, potential liability for the employers and states, and a lack of ERISA protections, such as the anti-discrimination rules and spousal protections, she said.

"So I'm not sure the answer is to set up a parallel structure that is outside of ERISA, that we're going to handpick which" ERISA-type protections "we want to put in there, and which ones we don't want to put in there," Bleier said.

The primary issue isn't making workplace plans accessible, but about ways for states to increase plan participation, Bleier said. For example, SIFMA worked with Washington state on its legislation, which used the current structure to create a marketplace to provide employers with a place to choose from private-sector plans that meet a set list of criteria, such as appropriate investments and fees, she said.

BNA Snapshot

State-Run Retirement Programs for Private Workers

Issue: Workplace auto-enrollment IRAs are likely to be states' best shot at establishing retirement programs for private workers.

Critics: Financial industry concerned that such programs would be anti-competitive for private-sector providers.

Judy Miller, director of retirement policy for the American Retirement Association, told Bloomberg BNA on Oct. 6 before the symposium that her organization's concerns with state-run plans is that they need to be "on an even playing field" with private providers.

Miller said the ARA has two primary concerns with the DOL's upcoming guidance. The first is that the DOL may tell states that auto-enrollment programs aren't ERISA arrangements, even though they would be if offered by private employers. The second is that the DOL may say that states can include open MEPs.

Open MEPs are single plans involving two or more unrelated employers. If the department allows such arrangements, states will have a competitive advantage over private providers, Miller said.

"If you combine those two, what you'll have is really ugly," because states could allow auto-enrollment payroll deduction IRAs that are exempt from ERISA, meaning employers would have no responsibility for reporting or other federal requirements, Miller said. It would be a "total mess" if private entities aren't allowed to offer open MEPs but can provide auto-enrollment payroll deduction arrangements that aren't subject to ERISA regulation, she said.

Auto-enrollment plans in which employees can opt out would work, because they would be voluntary, Miller said. Ideally, the DOL "will say that, but we don't think that's what they're going to do," she said.

Bleier said that SIFMA would be supportive of open-MEP style plans if the DOL were to allow them within the existing ERISA structure.

Simple, Radical

To make sure that the states' plans work, they need to be portable so that workers can take their savings from one employer to another, John said.

The states' initiatives don't address how to get contingent workforce individuals to save more, so that is another key issue that must be addressed, John said.

And there is much work to do to make sure individuals save more, Illinois state Sen. Daniel Biss (D) said during the symposium. Biss was one of the main drivers of Illinois's state initiative, called "Secure Choice."

"The conversation we're having is fundamentally about the fact that the system we have has failed. The system that exists is a dismal, tragic, catastrophic and moral failure," he said. Improving the retirement landscape may require examining options along the spectrum of "less radical" solutions under the current ERISA system and the "more radical" solutions of automatic IRAs, he said.

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