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State Retirement Savings Programs: Current Status, Lessons Learned and Future Prospects

By Angela M. Antonelli

Americans are facing a retirement crisis. The three-legged stool for retirement – Social Security, employer provided retirement benefits and personal savings – has become unstable as fewer companies offer traditional pension plans for their employees and employees have not saved much on their own for retirement. Approximately 55 million Americans work for employers which do not offer a retirement savings plan. According to the U.S. Government Accountability Office (GAO), 84 percent of the workers who do not participate in workplace retirement savings programs reported that the main reason was not having access to a workplace retirement program, rather than a failure to participate.

This lack of access to workplace retirement savings plans has generated considerable concern that millions of Americans will not have enough income in retirement. More than 25 percent of Americans reported having less than $1,000 in savings and investments and more than one-half reported having less than $25,000. Of those closest to retirement age (55-64), 41 percent do not have any assets in a retirement account. Social Security, with an average monthly benefit of $1,300, was never intended to be the sole source of income for Americans in their retirement. As a result, policymakers are realizing there may be significant future budget and tax consequences due to an increased demand for government services to care for our retirees, such as health care, housing, food, and transportation.

From Crisis to Opportunity: States as Innovators

In response to these challenges, state leaders from California to Connecticut have been exploring innovative models to provide simple, low-cost retirement savings plans for private sector workers. Workplace-based retirement plans are the most effective for encouraging retirement savings. At least 30 states in recent years have initiated studies or introduced and/or enacted legislation to establish state sponsored retirement programs.

California was the first state in 2012 to enact a law – the California Secure Choice Retirement Savings Program ("Secure Choice") – to consider the establishment of a mandatory auto-enroll individual retirement account (IRA) program for uncovered private sector workers. Massachusetts had established in 2012 a state 401(k) plan for nonprofit organizations.

Other states, such as Connecticut, Maryland, Minnesota, Oregon and Vermont, established retirement study working groups in 2013 and 2014 to build support for the introduction of authorizing legislation to create their own programs.

By 2015, the hard work done by states over several years to build support for state sponsored retirement savings programs began to bear fruit. Illinois and Oregon enacted auto-IRA programs. Washington, having tried before unsuccessfully to adopt a Secure Choice type program, established the first state marketplace to offer employers the opportunity to voluntarily use a web based portal providing access to low-burden, low-cost approved plans. In addition to the 5 states with new programs, at least 14 other states introduced legislation, many of them auto-IRA models, but others, such as Massachusetts introduced both an auto-IRA as well as state based multiple-employer plan (MEP) option. And others, including Maryland, New York City, Utah and Virginia launched new retirement study working groups.

Clearing a Pathway for State Action: Addressing the ERISA Question

The momentum in the states for action became hard to ignore. States were demonstrating they were willing to address the retirement security crisis. The question then became whether or not the federal government would support these efforts. Indeed, Congress' repeated failure to act on federal auto-IRA proposals was the impetus for action to move to the states. For states interested in addressing the retirement savings challenge, however, the question of whether and how federal laws would apply to these proposals has been a source of uncertainty and made some states hesitant to advance their own programs. More specifically, would such state plans be exempt from the Employee Retirement Income Security Act (ERISA)? ERISA was enacted to provide important protections for participants and beneficiaries in private sector employee benefit plans. Because of concerns about the costs and operational burdens of ERISA's reporting, disclosure, fiduciary and other obligations, states were requiring their IRA-based programs, most often requiring that employees be auto-enrolled (with an opt out) and some employer mandate, could move forward only if they were exempt from ERISA. ERISA already exempted federal, state and local government employee benefit plans, and the U.S. Department of Labor's (DOL) 1975 safe harbor also exempted certain payroll deduction IRA plans. However, it was not clear if the 1975 safe harbor would cover these new auto-enroll IRA programs.

In response to the large number of states in 2015 with new programs (e.g., California, Illinois, Massachusetts, Oregon and Washington) or considering legislative proposals, the Obama Administration moved quickly to address these concerns with the issuance of a new proposed regulation and interpretive bulletin in November 2015. The DOL proposed a new ERISA safe harbor for state sponsored auto-enroll IRA programs as long as certain conditions were met, including mandatory employer participation. DOL is expected to finalize this rule in 2016. In addition, DOL's interpretive bulletin covered state based plans for workers that comply with ERISA, including voluntary participation. These included three types of programs: 1) a marketplace, such as Washington State; 2) a prototype plan, such as Massachusetts; and 3) an "open" multiple-employer plan, being reviewed now by states, such as Massachusetts, as a possible new option. The interpretive bulletin took effect immediately upon issuance on November 18, 2015.

Launching State Programs: What Are Some Lessons Learned?

The current 2016 legislative session is off to a strong start with more than a dozen states, including Arizona, Colorado, Connecticut, Hawaii, Iowa, Louisiana, and Maryland, introducing or considering legislation to study or establish state sponsored retirement savings plans for private sector workers. Following the completion of their market analyses and feasibility studies, California and Connecticut must pass new enabling legislation to implement their programs. Illinois, Oregon, and Washington are moving forward to implement their new programs in 2017 and also will be doing additional market and feasibility analyses.

As these and other states contemplate establishing their own programs, what are some of the initial lessons learned?

- **Understand Your Target Population**. Market studies show that predominantly low-income minority populations have the lowest level of access to retirement savings programs. More than two-thirds of California's estimated 6.8 million uncovered eligible workers are minorities, 60 percent are under the age of 40, and the average salary is $35,000. Program information, financial education and outreach efforts will need to be designed to effectively reach the uncovered workforce.

- **Establish Guiding Principles.** Several states outline principles in their study reports or legislative proposals to guide the development of their programs. For example, Maryland's Task Force report outlines principles common to many of these state programs focused on the creation of simple, low-cost, low-burden, portable plans that help employers help their employees save and build a retirement income to last a lifetime. A self-sustaining, financially feasible program can be achieved through effective governance and utilizing low cost, high return pooled and professionally managed investments.

- **Engage Stakeholders Early and Often.** State leaders need to make it a priority to cast a wider net to reach out and work with stakeholders, including workers, small business owners, recordkeepers, financial firms, labor, low income advocacy groups, think tanks and others, to more effectively explain the seriousness of the retirement crisis, the effectiveness of tools, such as auto-enrollment, and the simple, low cost, low-burden options states can offer. States sponsored savings programs are not new, as we have seen with the success of 529 college savings and the more recent state ABLE savings programs.

- **Expanded Coverage, Participation and Retirement Savings Are Achievable.** The market analyses and feasibility studies in California and Connecticut show that high levels of program participation are likely to significantly increase the number of workers saving for retirement.

- **Avoid Overly Prescriptive Enabling Legislation.** DOL has cleared a pathway offering states more options than previously existed. But, as feasibility studies in California and Connecticut have shown, there may still be other new IRA and 401(k) options to be considered and with them new legal and regulatory issues to be resolved. And, as states gain experience with operating their programs, they likely will need to make adjustments. States would be wise to keep enabling legislation flexible, providing the freedom to study options and make the necessary program improvements to achieve program objectives while minimizing costs and burdens.

Prospects for the Future: Vision and Leadership Are Keys to Success

Retirement security has been a top financial concern for many Americans for more than a decade.

Although there have been several legislative proposals to establish a national program for uncovered private sector workers, Congress remains unlikely to enact a national program any time soon. However, the President's modest "myRA" program is a noteworthy effort to encourage retirement savings. But Americans feel leaders in Washington, D.C. do not understand their retirement struggle and support state efforts to set up retirement plans for uncovered workers.

Recent regulatory actions taken by the Obama Administration and the U.S. DOL suggest the federal government will be supportive of state efforts. As Illinois Treasurer Michael Frerichs said recently in a speech to the City Club of Chicago – "We have a retirement crisis in this country. We cannot ignore it, and we can't wait until someone else offers a solution." As Keith Ambachtsheer and Will Sandbrook note in their blog post about lessons learned from the UK experience, effective leadership guided by a strong vision is critical to success. In the United States, states are leading the way.

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