STATES MOVE FORWARD WITH AUTO-IRA PROGRAMS: WHAT'S NEXT FOR THE FEDS?

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By: Karishma Shah Page, Daniel F. C. Crowley, Victoria K. Hamscho

As the nation continues to struggle with the retirement preparedness gap, policymakers are exploring proposals to require employers that do not offer retirement plans to automatically enroll employees in Individual Retirement Accounts (IRAs). Several states are taking steps to require certain employers to automatically enroll employees in IRAs and recent guidance from the Department of Labor (DOL) has endorsed their efforts. However, despite numerous proposals at the federal level, the “auto-IRA” concept has yet to gain traction. Could these state actions serve as the basis for prompting federal action?

AUTO-IRA: AUTO-ENROLLMENT 2.0?

In the aftermath of the establishment of auto-enrollment in employer retirement plans by the Pension Protection Act of 2006, one of the key remaining impediments to closing the retirement gap is that many people do not have access to workplace retirement plans. This is particularly true of workers employed by small businesses that do not sponsor plans due to the associated costs, administrative complexity, and fiduciary liability. In an attempt to expand savings options for these workers, policymakers in the House and the Senate have introduced legislation to require employers that do not offer a retirement plan to auto-enroll employees in an IRA.

In the 114th Congress, Senator Sheldon Whitehouse (D-RI) has reintroduced the Automatic IRA Act of 2015 (S. 245); Representative Richard Neal (D-MA) introduced companion legislation in the House (H.R. 506). The legislation would require employers with 10 or more employees that do not offer a retirement plan to automatically enroll their employees in a payroll deduction IRA unless they opt out. In turn, the employers would be eligible for tax credits to help defray the associated cost. At a recent Senate Health, Education, Labor, and Pensions (HELP) Subcommittee on Primary Health and Retirement Security roundtable on retirement options for small businesses, Senator Whitehouse advocated for his auto-IRA legislation as a way to help employees who lack access to workplace retirement plans.

A number of auto-IRA proposals have been previously introduced in Congress and included in President Obama's budget requests. However, to date auto-IRA legislation has languished. Auto-IRA legislation has not gained traction among Congressional Republicans due to the imposition of a mandate for employers.

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Meanwhile, several states are moving forward with programs that require the automatic enrollment of private sector employees in state-run IRAs as a means of expanding options for employees who lack access to a

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workplace retirement plan. These state-based auto-IRA programs generally require employers to deduct specified amounts from their employees' paychecks and remit them to a state-run IRA while allowing employees to opt out at any time. Illinois, Oregon, California, and Connecticut are among the states taking steps to establish auto-IRA programs. Several other states are considering similar programs.

At the same time, there are pressing concerns about the status of such state-based auto-IRA programs under federal law. Senate HELP Committee Ranking Member Patty Murray (D-WA) and Senate Finance Committee Ranking Member Ron Wyden (D-OR) sent a letter to President Obama last year asking for the DOL to issue guidance on the legal issues surrounding state-based retirement programs, including auto-IRA programs. Accordingly, during the 2015 White House Conference on Aging, President Obama directed the DOL to issue guidance on state-based retirement programs for private sector employees.

In November 2015, the DOL issued proposed regulations establishing a safe harbor from the Employee Retirement Income Security Act of 1974 (ERISA) for state laws that require employers to automatically enroll employees in a state-run IRA. Although the DOL has yet to finalize these regulations, states have unanswered questions about the status of these programs under federal law, particularly under ERISA, the Internal Revenue Code, and securities law. Industry groups argue that the proposed regulations provide states with a competitive advantage in the small employer marketplace and will result in a “state-by-state patchwork of savings programs,” exposing employers to differing, and perhaps conflicting, state laws.

CONCLUSION

Auto-IRA efforts will likely continue to be the subject of intense debate at the state and federal levels. As states begin to take aggressive steps to establish various types of retirement programs and the DOL promulgates guidance endorsing their efforts, Congress will likely increase oversight. These efforts could also set the stage for federal action, creating both risks and opportunities for impacted stakeholders.

KEY CONTACTS



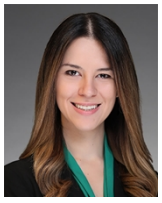
KARISHMA SHAH PAGE
PARTNER

WASHINGTON, DC
+1.202.778.9128
KARISHMA.PAGE@KLGATES.COM



DANIEL F. C. CROWLEY
PARTNER

WASHINGTON, DC
+1.202.778.9447
DAN.CROWLEY@KLGATES.COM



VICTORIA K. HAMSCHO
ASSOCIATE

WASHINGTON, DC
+1.202.778.9137
VICTORIA.HAMSCHO@KLGATES.COM

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