



AMERICAN BENEFITS

COUNCIL

BENEFITS BRIEFING WEBINAR
Update on State Retirement Plan Initiatives
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Refresher: How did we get here?

- **Coverage concerns**
- **Federal proposals**
 - E.g., automatic IRA; starter 401(k)s; improvements to multiple employer plans (MEPs); open federal TSP to private individuals
- **Congress avoiding employer mandates**
 - *myRA* moves past pilot stage
 - Available to anyone eligible to contribute to Roth IRA (Nov. 2015)
 - Voluntary payroll deduction Roth IRA (\$15,000 or 30 year max.)
 - Only investment is “R Bond” (similar to TSP G Fund)
 - State-run plan programs and proposals mushrooming

State-Run Plans

- ◉ **Numerous states expressing interest in one form or another**
 - California (2012); Massachusetts (non-profits) (2012); Illinois (2015); Washington (2015); Oregon (2015); Connecticut (2016), Maryland (2016); New Jersey (2016)
 - Plan proposals v. study bills
 - Voluntary v. mandatory employer participation
 - Employee v. state bears investment risk

State-Run Plans

- ◉ **Numerous states expressing interest in one form or another**
 - Coverage requirements vary
 - Illinois – Employers with 25 or more employees in the state that have been in business more than 2 years and do not offer retirement plan
 - California – Employers with 5 or more employees that do not offer a retirement plan or auto enroll payroll deduction IRA
 - Oregon – Mandatory unless employer obtains exemption for offering a qualified retirement plan
 - Maryland – Any employer engaged in commerce in Maryland that has not offered plan in prior two years
 - Connecticut – At least 5 employees in CT and paid at least \$5,000 in wages in prior year to at least 5 employees, unless offered another retirement plan

ERISA-Covered Plan?

- ◉ **Many state-run plan programs may not be implemented if the plan would be subject to ERISA**
 - State laws typically require DOL opinion or ruling (or similar determination) regarding applicability of ERISA
 - 1975 safe harbor: ERISA does not cover a payroll deduction IRA arrangement if employee participation is “completely voluntary”
 - ◉ Auto enrollment with opt-out option does not qualify
- ◉ **In July 2015, President Obama directed DOL to publish guidance supporting these state-run plan efforts**

DOL Guidance

- ◉ **Published November 18, 2015**
- ◉ **Proposed safe harbor regulation**
 - Describes circumstances under which a state-run payroll deduction IRA with mandatory employer participation will not be an employee benefit plan under ERISA
- ◉ **Interpretive Bulletin (IB) 2015-02**
 - Describes 3 approaches for states to assist employers with establishing an ERISA-covered plan
 - Allows states (but not private entities) to offer open MEPs

Council Comment Letter

- ◉ **Avoiding burdens on current plan sponsors, to avoid undermine current system:**
 - Protect current plan sponsors from additional burdens and expense
 - Give employers an option to avoid being subject to multiple state regimes
 - Help eliminate situations where an employer could be subject to conflicting state regimes with respect to the same employee

Council Comment Letter

- **Specific changes to avoid these burdens:**
 - Employers that offer a plan should be exempt, even if some employees must meet eligibility requirements
 - At a minimum, employers should be exempt if they offer an alternative savings vehicle like a payroll deduction IRA
 - Employers can select a single state into which it will enroll all employees subject to any state's mandate
 - Only residents of the state are subject to the state mandate, and the employer can rely on the employee's representation

Council Comment Letter

- ◉ **Eliminate the requirement that employer participation be mandatory**
 - Would allow states to make the program voluntary
 - Would allow those employers not subject to the mandate to participate if they chose.
- ◉ **Provide parity to open MEPs offered by private entities**
- ◉ **Provide notice and comment on Interpretative Bulletin**
 - Part of Council's longstanding advocacy to improve transparency and process in rulemaking

Implications of Safe Harbor for Large Employers

- ◉ **Safe harbor appears designed to accommodate states that have enacted mandatory laws**
 - Expect movement toward implementation, and a bigger push in other states with similar proposals to pass legislation next year
- ◉ **DOL acknowledges that a court may view ERISA's application differently**
- ◉ **Employers that sponsor a retirement plan will be forced to confront ambiguity and competing and conflicting differences in state statutes**

Implications of Safe Harbor for Large Employers

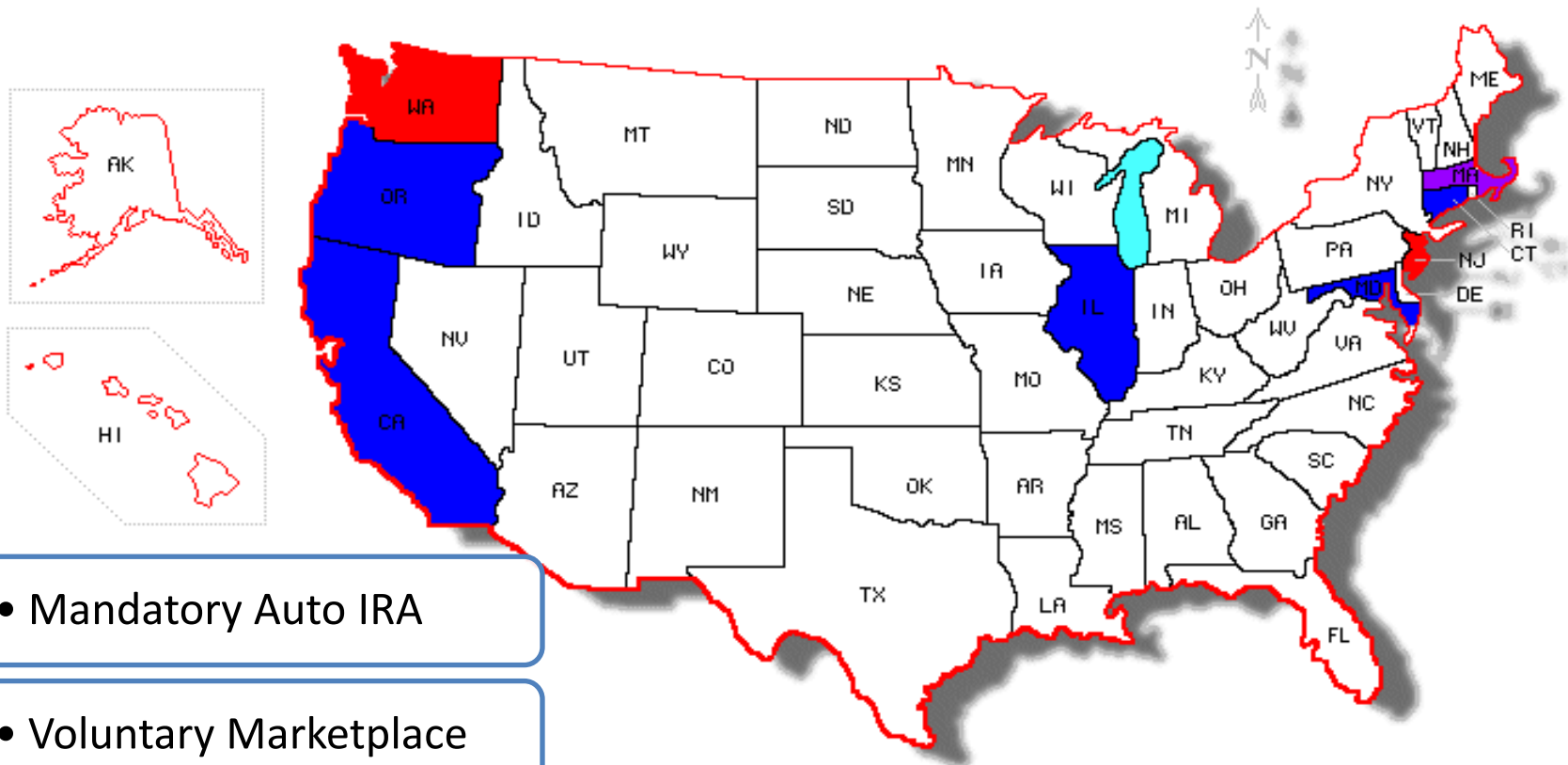
• Time to revisit these questions:

- Do you have employees in multiple states?
- Is *every single one* of your employees covered?
- What happens if a state mandates its plan unless you have a certain *kind of plan or benefit* (cf. USA Retirement proposal)
 - Mandate unless plan has automatic enrollment
 - Mandate unless certain kinds of investments offered
 - Mandate unless certain level of employer contributions
 - Mandate if plan fees exceed certain levels

Updates on State Developments

- ◉ **A few new states have enacted mandatory legislation**
 - Maryland and Connecticut
- ◉ **New voluntary program enacted in New Jersey**
- ◉ **A number of states considered and rejected legislation**
 - E.g. Hawaii, Indiana, Louisiana, New York, North Carolina, Rhode Island, Utah
- ◉ **New states passed or extended study bills**
 - South Carolina, Vermont
- ◉ **DOL final regulation at OMB for review**

Current State Map



- Mandatory Auto IRA
- Voluntary Marketplace
- Voluntary State Run Plan

California and Illinois



- ◉ **California requires further implementing legislation**
 - Passed California Senate on June 2, currently under consideration in Assembly

- ◉ **Illinois amended its law, among other things, to limit expenses to 0.75%.**
 - Board meeting monthly. Issued RFP for market analysis report July 26



State/Private Sector Study

Develop consensus recommendations to minimize administrative burden/costs

- Early states will set precedents for all state-run retirement plan systems

Participants

- States (CA, CT, IL, MD, NYC, OR, WA)
- Payroll Firms (NPRC members, Independent Payroll Processors Association)
- Employer Associations (e.g., American Payroll Association...)
- Research/Advocacy organizations (e.g., Pew Charitable Trusts, Boston College)

Definitions: Employee

- Use existing law already well-understood by employers
- Consistency between the states may be critical
- State residents, or individuals who work in a state?
 - Employees who live in one state and work in another
 - Temporary presence/short-term assignments in a state
 - Will reciprocal agreements automatically apply?

Definitions: Employer

- Optimally consistent across states
- Clarify who is responsible
 - Could more than one employer be responsible?
 - E.g., Staffing/temporary services & similar
- Employers exempted if they offer a retirement plan
 - What if the employer plan doesn't cover everyone?
 - Part-time; seasonal; temporary/contingent...
- Household Employers?

Automatic Enrollment Implications

- Define enrollment systems, elements
- Would enrollment need to precede withholding, deposits?
 - If so, what confirmation process would be necessary?
- Patriot Act Customer Identification requirements?
- Error resolution process
 - Missing/incorrect elements (e.g., name/SSN don't match)
 - e.g., new enrollments to existing accounts with different names
- Adjustments/changes; e.g., late opt-outs/withdrawals
- Contributions may be volatile (hours, leaves etc.)

Notices, Authorizations

- Recordkeeping burden
 - Audit trail to prove disclosures?
 - CA statute requires signed acknowledgement of disclosure notice – warranted?
- Languages/accessibility
 - Must employers furnish notices in multiple languages?
- Absolutely everything needs to be electronic
 - Permit electronic communications (e.g., disclosures, elections) for employers that routinely provide employment-related policy information electronically
- Self-service must be compelling



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State Retirement Plans: Policy Challenges

August 5, 2016

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State Mandated IRAs: Concerns

- Mandates expected to apply to uncovered employees of employers with plans.
 - **This forces employers to deal with two administrative systems: a plan system and the state IRA system**
 - **Employers will need to move employees between systems as employees change statuses**
 - **Mistakes are inevitable. Correction mechanism?**



State Mandated IRAs: Concerns

- Many new small employers likely to adopt state IRA instead of plans.
 - **Low cost**
 - **No fiduciary liability**
 - **No administrative duties**
 - **Favorable media portrayal of state IRA**
 - **Would have to use state IRA to some extent regardless**



State Mandated IRAs: Concerns

- Other small and mid-sized employers likely to choose state IRA over plan.
 - **Competitive pressures, plus same factors as above**
- Some states only apply mandate to employers without a plan for two years.
 - **Ineffective to prevent employers from dropping plans, and unworkable**



State Mandated IRAs: Concerns

- If mandates apply to plans without specific features, such as passively managed funds, exodus from plans will accelerate.



State Mandated IRAs: Concerns

- Ultimately, state mandates cannot work without a national framework to prevent conflicts between states.



State Marketplaces: Concerns

- Many concerns even here. For example:
 - **Micromanaging access to marketplace, such as restrictions on expenses or actively managed investments**



Policy Options

- Federal preemption
 - **No chance in Congress at this time without a federal mandate**
- Federal mandate
 - **Increasing discussion among companies and members of Congress about federal mandate**



Policy Options

- Discussions with states:
 - **Prospect of fewer plans and lower benefits in their states**
 - Issue: states are not convinced
 - **Prospect of federal government stepping in later due to conflicts between states**
 - Overriding state plans to some extent



Thanks and Questions