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Proposed Congressional Repeal of Federal Regulations Supporting State Auto-IRAs Threatens Retirement Security of 13 Million Workers in Five States

by Nari Rhee, Ph.D.

Summary

Republicans in Congress are trying to repeal Department of Labor (DOL) regulations that provide a safe harbor for states and large cities to sponsor retirement savings programs for private sector workers without running afoul of federal pension laws. Currently, five states—California, Connecticut, Illinois, Maryland, and Oregon—are in the process of establishing Auto-IRAs, also known as Secure Choice programs, which will provide workers whose employers do not offer a retirement plan an easy, low-cost way to save for retirement. Congressional repeal of the safe harbor regulations would throw these efforts into a legal gray zone and threaten the retirement security of millions of workers. This brief highlights the following facts:

- ▶ **The need to increase access to retirement saving vehicles is greater than ever.**
 - Nationally, the share of private sector workers without access to a pension or 401(k) increased from 38% in 1998 to 56% in 2015.
 - Just since 2012, the number of employees without access to a retirement plan increased from 45 million to 55 million—an addition of 10 million workers, reflecting both employment growth and decline in employer sponsorship of retirement plans.

► **Congressional repeal of safe harbor regulations for Auto-IRAs would jeopardize the retirement security of 13 million workers in the five states that have already passed Auto-IRA legislation.**

- California, Connecticut, Illinois, and Maryland, Oregon are in various stages of standing up Auto-IRAs. They have expended considerable resources to design programs that meet the needs of employees and employers while conforming to federal regulations.
- A repeal of the DOL safe harbor for state- and city-sponsored Auto-IRAs would disproportionately impact the most vulnerable workers: low- wage workers, small business employees, and Latinos who are greatly disadvantaged in workplace retirement plan access.

Background

Since 2012, states have stepped into the breach to address the burgeoning retirement crisis. The typical working-age household only has \$2,500 saved in retirement accounts,¹ and about half are at risk of not having enough income to maintain their standard of living when they retire.² Indeed, each generation is projected to retire poorer than the last.³ A major reason is that a large share of workers do not have access to a retirement plan at work. In the absence of federal policy action, eight states have passed legislation since 2012 to head off the tide of growing elder poverty by sponsoring retirement savings programs for private sector workers.⁴

Currently, five states—California, Connecticut, Illinois, Maryland, and Oregon—are in various stages of launching an Auto-IRA program, also known as Secure Choice. Employers in these states that do not sponsor a pension or 401(k) will be required to automatically enroll their employees into a state-sponsored Individual Retirement Account. (See

Box “How Will State Auto-IRAs Work?” at the end of this brief for details.) Both the employer mandate and auto-enrollment—albeit with employee choice to opt out—are required to significantly increase retirement saving.

In order to provide regulatory clarity, the U.S. Department of Labor finalized regulations in 2016 specifying the conditions under which states—and large municipalities—can implement Auto-IRAs without violating federal pension laws.⁵ These regulations are critical in that they specify how states can operate these programs without triggering federal pre-emption or imposing fiduciary liability on employers.

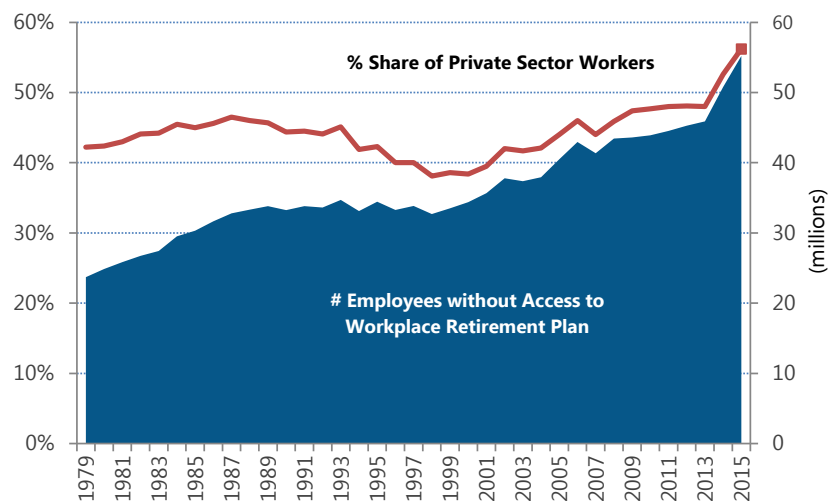
Unfortunately, two Resolutions of Disapproval—H.R. Res. 66 and H.R. Res. 67—were introduced in the House of Representatives in early February 2017 to nullify these regulations, and to prevent the DOL from ever considering them again. These resolutions fall under an obscure law called the Congressional Review Act which allows Congress to undo federal regulations within a certain time-frame. The House voted to pass both resolutions on February 15, and the Senate is expected to vote on similar resolutions in the coming weeks.

The need for increased access to retirement saving vehicles is greater than ever

Nationally, half of private sector employees lack the opportunity to save for retirement through payroll deduction. Workers are 15 times more likely to save when they can do so directly from their paychecks.⁶ Low-wage workers, small business employees, and Latinos are particularly disadvantaged in workplace retirement plan access. Social Security, which averages about \$1,300 a month,⁷ is not enough to keep many seniors out of economic hardship—especially in high cost states like California and Maryland. At the same time, private employers, particularly small and medium size businesses, find it difficult to sponsor retirement plans.

In fact, private employer sponsorship of retirement plans has declined steadily over the past two decades (see chart to the right). In 1998, only 38% of private employees did not have access to a job-based retirement plan. As of 2015, the share of workers without access had risen to 56% despite a tighter labor market—higher than at any time since 1979, the last year for which this data is available. And just between 2012 and 2015, the number of employees without access to a retirement plan increased by 10 million workers, from 45 million to 55 million, reflecting both employment growth and decline in employer sponsorship of retirement plans.

Need for access to workplace retirement savings has increased sharply in the past two decades



Source: Author's analysis of CPS ASEC. Universe is private sector wage and salary employees age 25-64.

The Retirement Security of 13 Million Workers Will be Jeopardized if Congress Reverses Existing Regulations

California, Connecticut, Illinois, Maryland, and Oregon have completed studies and are in various stages of standing up their Auto-IRA programs. Oregon has already contracted with a financial services provider and will be first to bring a program online in July of this year. California expects to start enrolling workers in 2018. The table to the right lists the number of workers eligible for each state's program, as well as the percentage of private employees without access to an employer sponsored retirement plan.

Thirteen million workers are poised to gain access to automatic retirement savings accounts under current DOL regulations

	% of Private Sector Employees Age 25-64 without Access to Workplace Retirement Plan in 2015*	Workers Eligible for State or Muni Auto-IRA** (millions)
California	61%	7.8
Connecticut	49%	0.6
Illinois	56%	2.4
Maryland	53%	1.2
Oregon	54%	1.0
Total eligible workers in state-run programs		13.0

*Author's analysis of CPS ASEC.

**CA, CT, IL, and MD eligible worker estimates are based on author's analysis of CPS ASEC and state rules on eligibility by firm size. Universe is private sector workers age 18-64 who do not have access to a workplace retirement plan. OR estimate is from the Oregon Retirement Savings Board, and also includes workers excluded by their employer's retirement plan eligibility rules.

How Will State Auto-IRAs Work?

Employers that do not sponsor a qualified retirement plan, such as a pension or 401(k) type program, will be required to enroll their employees into the state-sponsored retirement savings program. Individual employees can opt out.

Once enrolled, a modest contribution (3-5%) will be deducted from each employee's paycheck and deposited into an IRA in their name. Funds will be invested in a diversified portfolio managed by private investment managers, under the oversight of a publicly appointed board of trustees. The account will be portable, with no need to roll over funds when workers change jobs. Accumulated funds will be available for withdrawal at retirement under normal IRS rules governing IRAs.

Administrative and investment costs will be paid by participant fees. Once start-up costs are repaid, state Auto-IRAs can expect to be able to charge fees that are significantly below the norm in the small business market.⁹ The purchasing power of a large number of savers, combined with simplified plan design, will allow states to negotiate lower fees with financial service providers.

Repeal of the safe harbor regulations will not necessarily end these programs. The five states plan on continuing with their Auto-IRA programs regardless. But at best, taking away the safe harbor would throw these programs into legal uncertainty, and the five states would likely face legal challenges in court. In addition, other states would be discouraged from adopting similar policies.

Finally, Congressional efforts to block state Auto-IRAs threaten the retirement security of economically vulnerable workers, in particular low- and middle-wage workers, small business employees, and Latinos. Potentially eligible workers in the five states with Auto-IRA initiatives have a median annual personal income of \$30,000—that is, half of eligible workers earn \$30,000 a year or less. Small business employees—those working for firms with less than 100 employees—make up 53% of potentially eligible workers. People of color make up 56% of potentially eligible workers, with Latinos comprising 33%.⁸ These are workers who are particularly disadvantaged in workplace retirement plan access, given disparities by income, race, and firm size.

Endnotes

¹ N. Rhee and I. Boivie (Feb. 2016), “The Continuing Retirement Savings Crisis,” National Institute on Retirement Security, Washington, DC.

² A.H. Munnell, W. Hou and A. Webb (Dec. 2014), “NRRI Update Shows Half Still Falling Short,” IB#14-20, Center for Retirement Research at Boston College, December 2014.

³ Munnell, House and Webb, op cit.

⁴ The other three states that have passed private sector retirement legislation are Massachusetts (establishment of multiple-employer 401(k) type plan in which nonprofits can voluntarily participate), and Washington and New Jersey (establishment of 401(k) marketplace).

⁵ U.S. Department of Labor/Employee Benefit Security Administration, Savings Arrangements Established by States for Non-Governmental Employees, 81 FR 59464, <https://www.gpo.gov/fdsys/pkg/FR-2016-08-30/pdf/2016-20639.pdf>. U.S. Department of Labor/Employee Benefit Security Administration, Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees, 81 FR 92639, <https://www.gpo.gov/fdsys/pkg/FR-2016-12-20/pdf/2016-30069.pdf>.

⁶ Employee Benefit Research Institute and Greenwald & Associates, “2014 RCS Fact Sheet #6, Preparing For Retirement In America,” <https://www.ebri.org/pdf/surveys/rcs/2014/RCS14.FS-6.Prep-Ret.Final.pdf>.

⁷ Social Security Administration (Jan. 2017), “Monthly Statistical Snapshot, December 2016,” https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/2016-12.pdf.

⁸ Author’s analysis of U.S. Bureau of Labor Statistics, Current Population Survey Annual Social and Economic Supplement (CPS ASEC).

⁹ N. Rhee (Nov. 2016), “Lessons from California, Connecticut, and Oregon: How Plan Design Considerations Shape the Financial Feasibility of State Auto-IRAs,” Georgetown Center for Retirement Initiatives, Washington, DC.

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