

# Closing the Coverage Gap for Private Sector Workers: The U.S. Legislative and Policy Outlook

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*GEORGETOWN UNIVERSITY*

# Why Are States Acting?

- Top financial concern
- Too little saved and Social Security isn't enough
- More than half of private sector workers are uncovered
- Long-term budget consequences
- Long-term economic consequences
- No success at the national level

# THE CENTER FOR RETIREMENT INITIATIVES (CRI) A RESOURCE FOR STATES

To foster state innovation by serving as a trusted public policy center that offers rigorous research, technical assistance, and effective advocacy for state-based retirement solutions by:

- ✓ Connecting state policymakers, scholars and industry experts.
- ✓ Sharing research, best practices and success stories with state policymakers.
- ✓ Analyzing legislative and regulatory developments and assisting with program design.
- ✓ Serving as a resource to all states and stakeholders in addressing the challenge of achieving retirement security for more Americans and promoting policies that will strengthen the economy.

# Center for Retirement Initiatives

- ❖ Three Bipartisan Advisory Councils
  - Council of State Advisors
  - Advisory Council and Council of Scholars
- ❖ State Legislative Working Group
  - Convene monthly to share information and lessons learned
- ❖ Clearinghouse for State Legislative Activity
  - Interactive state map tracking legislation as it moves
- ❖ Policy papers and state briefs
- ❖ Conferences, meetings, policy briefings

# From Crisis to Opportunity

- For Innovation and Leadership Look to the States
- States Are Stepping Up To Address Retirement Security
- Goal To Design Simple, Low-Cost, Easily Accessible and Effective Savings Options



# Would ERISA Apply to State Initiatives?

## The \$64,000 Question

- ❑ ERISA is the federal law that governs employer-sponsored retirement plans.
- ❑ Uncertainty as to whether ERISA would apply to these state plans.
- ❑ President Directed the Department of Labor (DOL) to Issue Rules to "Provide a Clear Path for States to Create Retirement Savings Programs" on July 31<sup>st</sup>, 2015.
- ❑ DOL issued proposed regulatory changes in November 2015 with goal to finalize by end of 2016.
- ❑ Policies addressed the 2 approaches:
  1. "Non-ERISA" - Mandatory, auto-enroll IRAs
    - Proposed rule creates new safe harbor allowing state sponsored mandatory auto-enroll IRA to be exempt from ERISA.
  2. ERISA covered –MEPs, Prototype Plans, and Marketplace
    - Proposed guidance allows for state open Multiple Employer Plan (MEP) arrangement by the state to facilitate plan formation and take burden off of employers, but maintain ERISA protections.
    - ERISA applicability does not allow program to be mandatory for employers (ERISA plan can be an option in a marketplace model)

# 8 States – 3 Models....So Far

1. IRAs (“non-ERISA”)
  2. 401(k)s (“ERISA”)
  3. Marketplace (“ERISA plans”)
- Future – Open Multiple Employer Plans (MEPs)?
  - Others to be designed consistent with federal Department of Labor guidelines (combinations)?

# SECURE CHOICE (CA, CT, IL, MD, OR)

## Auto-IRAs

- Mandatory, auto-enroll (with opt-out)
- Default contribution
- Employer contributions generally not permitted (would trigger ERISA)
- Pooled and professionally managed funds
- Must keep fees “low” (.75%-1% range)
- Market analysis and legal analysis to guide design and management issues

# MARKETPLACE (WA, NJ)

- Managed by State Agency.
- Voluntary participation for employers with less than 100 employees.
- SIMPLE IRA, myRA (Roth IRA), and payroll deduction IRAs and others can be added.
- Employer contributions encouraged (ERISA plans encouraged).
- To be built and funded by private sector.
- Participation providers must offer at least two product options.
- Fees cannot exceed 1%.

# Massachusetts -401(K) for Non-Profits

- Managed by the State Treasurer
- Voluntary participation by non-profit employers with 20 or fewer employees
- Defined contribution 401(k) plans.
- Auto-enroll with opt-out.
- Default contribution at 6% or can choose 4% with auto-escalation up to 10%.
- Fees estimated to be well under 1% (20-80 bps).

# State Implementation Issues & Challenges

- Funding Availability
  - Start up costs & role of private sector funding vs. government funding.
- ERISA Uncertainty
  - DOL rulemaking encouraging but needs to be finalized to mitigate uncertainty and encourage future action.
- Market & Feasibility Analyses Role in Plan Design
  - Learning while implementing; doing it after plan design (IL, WA)
  - Demonstrates needs for flexibility in legislation
- Outreach to Stakeholders
  - Business community, small businesses
  - Low-income advocacy groups
  - Financial services industry
  - Labor unions
- Building and Managing the Program
  - Establishing and communicating the rules and processes for employees & employers with respect to enrollment, opt-out, withholding and submitting contributions; selecting product options; rules for withdrawals and portability; investing and managing assets; consumer protection regulatory framework; deciding what operations to contract out vs. keep in house, etc.

# Key Plan Design Considerations

- Voluntary or mandatory participation
- Role of employer and employer liability
- Types of employers and workers covered
- Default, minimum and maximum contribution levels
- Use of other tools and nudges such as auto-escalation
- Use of tax or other incentives

# Key Plan Design Considerations

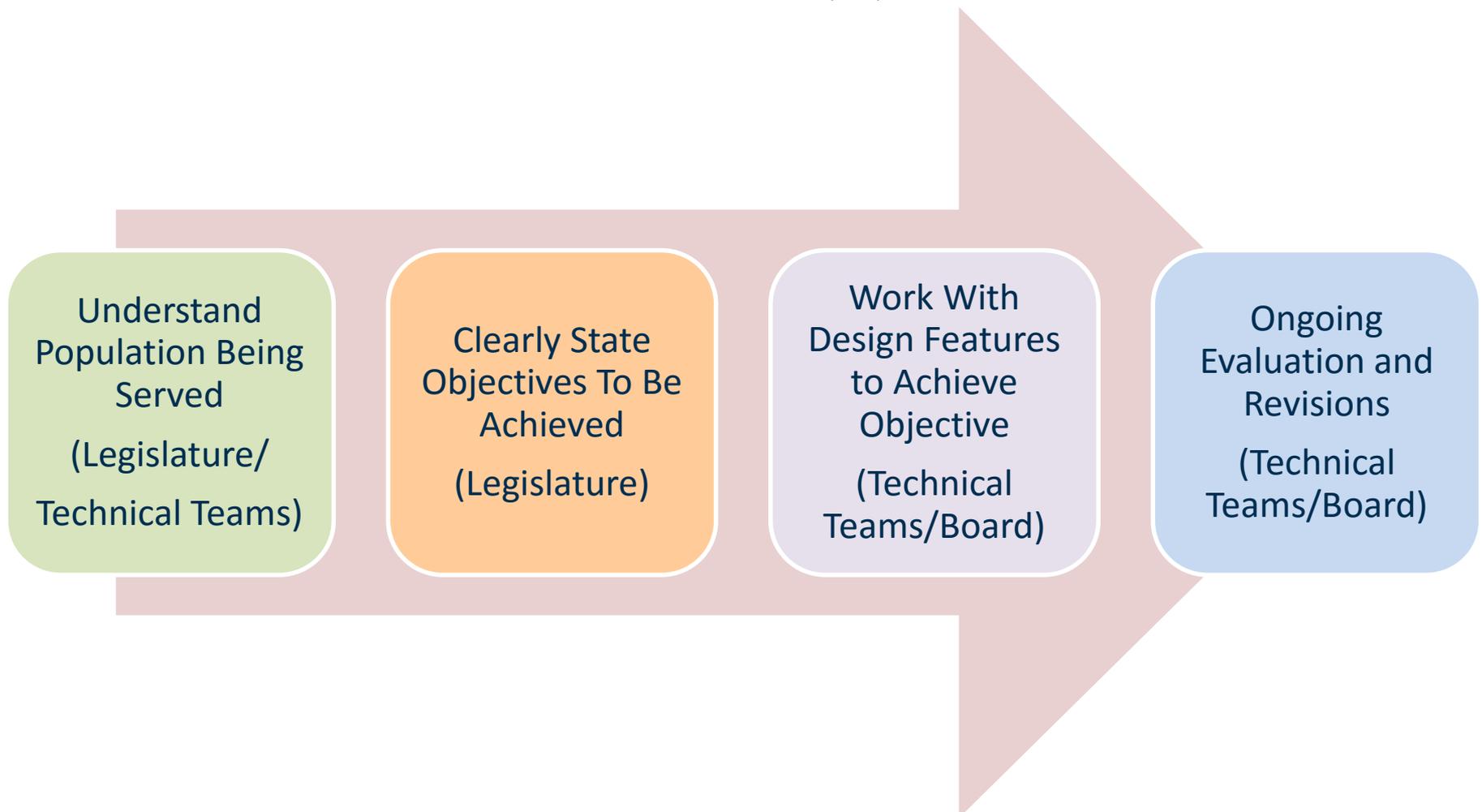
- Investment and management of assets
- Withdrawal rules and portability
- Guarantees
- Program administration and governance
- Program funding
- State liability

# State Initiatives: Lessons Learned

- ✓ Understand the Target Population
  - Employees
  - Employers
  - “Gig economy” and the independent contractor
- ✓ Engage Stakeholders Early and Often
  - Visit with small businesses, low income advocacy groups, etc.
  - Take advantage of resources of organizations committed to your goals.
  - Reach out to other states to learn from their experiences.
- ✓ Define Overall Policy Goals and Objectives
  - Understand what improving retirement security means (e.g., savings only or creating a stream of lifetime income, etc.).
- ✓ Design the Program to Meet Your Goals
  - Keep the design simple and easy to understand to boost participation.
- ✓ Be Prepared to Refine the Program Design
  - Avoid detailed design features in law to provide flexibility to adjust in implementation.
- ✓ Keep the Future in Mind – How Will Success Be Measured?
  - You can define it or others will define it for you.

# Successful Reform Needs An Effective Sequencing Process

Merton-Muralidhar (*working paper*) examines this approach for uncovered workers' voluntary defined contribution (DC) reforms



# States' Actions Reignite Push for National Solution

- CEO of major firms announcing their own proposals for consideration.
- Federal legislative proposals have been introduced for several years including this current Congress but no movement.
  - Launch of voluntary myRA program modest step
  - President's FY 2017 budget proposal supports open-MEPs, state initiatives
- Action in 2016 with election cycle is unlikely.

# Outlook for 2016-17

- DOL finalizes ERISA safe harbor rulemaking
- CA needs enabling legislation to launch program
- Success of state initiatives reigniting interest in a national solutions but action unlikely any time soon
- Action and Trends for 2017 and beyond
  - Implementation work will be watched (WA,OR first)
  - State studies continue (VT & others)
  - Large cities exploring their own plans (NYC, Seattle, Philadelphia)
  - Evolution of models continues
  - Private sector innovation in response to state efforts
  - Public- private partnerships & additional reforms
  - How to expand focus from accumulation to decumulation and lifetime income (more DB attributes in a DC world)

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## President Directs DOL to Issue Rules to "Provide a Clear Path for States to Create Retirement Savings Programs"

[More information here](#)

### STATES AS INNOVATORS

#### **WILL 2015 BE THE YEAR FOR STATE SPONSORED RETIREMENT SAVINGS PLANS? STATES ARE OFF TO A STRONG START!**

**NEWS** - July 13th, 2015. At today's White House Conference on Aging, President Obama called on the U.S. Department of Labor and Secretary Tom Perez to issue by year's end a proposed set of rules "to clear a path for states to create retirement savings programs." The President indicated that he wants "to do everything we can to encourage more states to take this step."

[President Obama's blog post](#)

### RETIREMENT SECURITY FAST FACTS

Download Retirement Security Talking Points!

#### FAST FACT SHEET #2

*How Prepared Are Women For Retirement?*

### NEWS AND REPORTS

**The Savings & Investment Bipartisan Tax Working Group Report**, U.S. Senate Finance Committee, July 7, 2015

**The Federal Reserve's 2014 Survey of Household Economics and Decisionmaking**, May 2015

**Simplifying Choices in Defined Contribution Retirement Plan Design**, The Pension Research Council, May 2015

**The 2015 Retirement Confidence Survey: Having a Retirement Savings Plan a Key Factor**, EBRI, April 2015

**An Analysis of the Illinois Secure Choice Savings Program**, New America, April 1, 2015

**State-run retirement programs picking up steam**, BenefitPro, March 22, 2015

**Congress Forms Retirement Caucuses**, BenefitsPro, March 4, 2015

**Americans' Views of the Retirement Crisis**, National Institute on Retirement Security, March 2015 Report

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