
A Safe Harbor is in Jeopardy

By Kerry Pechter *Thu, Feb 16, 2017*

We shouldn't deprive workers of 'bread' on the chance that brokers will be able to sell 'cake' to their employers.



Last week, congressmen from two red states introduced joint resolutions that would stop workers in blue states and cities like California and New York from getting access to tax-deferred, auto-enrolled salary-deferral savings plans where they work—if their employer doesn't otherwise offer such a plan. Those bills were passed by the House of Representatives this week.

The bills, H.J.R. 66 and 67, from Tim Walberg (R-MI) and Francis Rooney (R-FL) would kill the rule passed by the Department of Labor last August (and amended last December to include local municipalities), which created a “safe harbor” that ensured that states and municipalities could set up auto-IRA programs without the programs becoming regulated by the Department of Labor or being subject to the burden of U.S. pension law, ERISA.

With little or no public discussion, we've now seen attacks on two DOL initiatives that underwent a great deal of review: the fiduciary rule for advisors and the ERISA safe harbor. Are Social Security and Medicare next?

RIJ believes that these joint resolutions, and the sudden change in direction that they indicate, are wrong. All employees, regardless of their employers' preferences and no matter how small their company, should be able to access tax-deferred savings programs at work, just as employees at large companies do. In the absence of effective federal action, states and cities have a right and duty to try to close the savings gap.

Private industry hasn't solved the workplace savings plan coverage gap. Workers need salary-deferral savings programs at work, because few people take the initiative to save for retirement in traditional IRAs.

Millions of workers are failing to save for retirement, which will increase their need for help from Medicaid and other federal programs if they run out of money in old age. A publicly

sponsored program in the U.K., called NEST, showed that such programs are necessary, effective and disproportionately help underserved minority and low-income workers.

The plans—almost exclusively in states with Democratic legislatures like California, Connecticut, and Oregon—would allow individual workers to contribute automatically to IRAs. The savings would be invested in U.S. government bonds until the balances became large enough to transfer to a fund company. Participants would be auto-enrolled but could drop out of the plans if they wish.

There's nothing wrong with government bonds for new savers; small account owners have little to gain from higher risk exposure. For new plan enrollees, it's more important to create a savings habit than to worry about upside potential.

There's only one reason to kill the state and local initiatives in their cradles: To make sure that no "public option" might crowd out private options, such as agent- and broker-sold 401(k) plans. But there's no evidence that public plans will do that.

The Department of Labor considered the crowd-out issue and rejected it, reasoning that 401(k) plans offer richer benefits (such as higher contribution limits and richer tax benefits, especially for business owners and highly-compensated executives) than auto-IRAs. It's been observed—even by Brian Graff, CEO of the American Retirement Association—that auto-IRAs could even be a stepping-stone to a 401(k) plan for many small employers.

Given the retirement savings shortfall in the U.S., estimated by EBRI at \$4 trillion, the nation can't afford to deprive millions workers in small businesses the same chance to save for retirement on a tax-deferred basis that workers in large plans take for granted, just to ensure that brokers and agents don't have to compete against even a relatively weak public alternative.

The privilege of tax-deferral should be available to all, and not dependent on the whims of employers. We shouldn't deprive workers of "bread" on the chance that brokers will be able to sell "cake" to their employers.