Shadow of ERISA hangs over state-run retirement plans

By Editorial Staff *Thu, Oct 29, 2015*

California, Illinois and Massachusetts have all enacted laws creating state-run defined contribution plans, but uncertainty that such plans might be subject to Department of Labor regulation is delaying implementation.

Efforts by a half-dozen U.S. states to provide "public option" retirement savings plans to workers without access to such plans at work have encountered the classic American conflict between state and federal sovereignty—the same conflict that once sparked a bloody Civil War.

Nobody expects war to break out over the states' rights to set up IRAs or defined contribution plans, but California, Illinois and at least four others have hesitated to implement these plans because of "uncertainty" about whether the plans would be considered pensions and therefore fall under the regulation of the U.S. Department of Labor's Employee Retirement Income Security Act of 1974 (ERISA).

At the Senate's request, the Government Accountability Office (GAO) has issued a new report, "**Retirement Security: Federal Action Could Help State Efforts to Expand Private Sector Coverage**," that recommends steps federal legislators and regulators might take to allow states to customize their plans without fear of violating ERISA.

According to the report, "One solution might be a 'safe harbor' plan that, by design, would comply with ERISA. According to the GAO, Congress could direct or authorize the Secretaries of Labor and Treasury to:

> (1) Promulgate regulations prescribing a limited safe harbor under which state workplace retirement savings programs with sufficient safeguards would not be preempted and would receive tax treatment comparable to that provided to private sector workplace retirement savings programs, or
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> (2) Create a pilot program under which DOL could select a limited number of states to establish workplace retirement savings programs subject to DOL and Treasury oversight."

In addition, the report said, "the Secretary of Labor could direct the Employee Benefits Security Administration's (EBSA) Assistant Secretary… to clarify whether states can offer payroll deduction Individual Retirement Accounts (IRAs) and, if so, whether features in relevant enacted state legislation—such as automatic enrollment and/or a requirement that employers offer a payroll deduction—would cause these programs to be treated as employee benefit plans."

En route to these recommendations, the GAO report reviewed the current stage of development of the state plans. California, Illinois and Massachusetts have all enacted laws creating state-run plans. California is currently conducting feasibility studies in advance of implementation, while the other two states are "developing implementation." Maryland, Washington, and West Virginia have introduced laws creating state-run plans but haven't passed them yet.

The GAO also looked for lessons-learned from other countries that have introduced state-sponsored retirement plans. New Zealand has a Kiwi Saver plan, the United Kingdom has the National Employment Savings Trust, the province of Quebec has a voluntary national savings plan, and Canada as a whole offers optional Pooled Registered Pension Plans, all designed to expand access to savings plans or to increase overall retirement savings.

The state-run DC/IRA movement is driven by the fact that only about half of full-time private sector workers have access to retirement savings plans at work. The GAO found that lower-income workers and workers at the smallest companies are the least likely to have access to an employer-sponsored retirement savings option, but that they do use such plans when available.