VOL. 34, NO. 4 WINTER 2021

BENEFITS LAW JOURNAL

From the Editor

Naked and Afraid (to Retire)

A bipartisan effort to create a no-cost national savings program was sacrificed to political expediency. Again. Championed by Ways and Means Chairman Richard Neal (D-MA), the proposal would have given the 55 million Americans without a workplace retirement program an effective way to save without burdening their employers. Specifically, employers would have been required to either offer their employees a 401(k) or 403(b) with automatic enrollment or facilitate automatic contributions to an Individual Retirement Account ("IRA"). The latest proposal, part of the decidedly partisan Build Back Better Act, also would have made the existing low-earner $1,000 savers credit refundable (if the participant does not earn enough to pay taxes, he or she receives the credit via cash or an IRA contribution) and extended the $500 credit for small employers for facilitating an auto-IRA.

Rep. Neal's savings program was ripped out in November, ostensibly to avoid the cost of the enhanced credits. I think the real reason this urgently needed legislation has not passed is that it does not provide the quick return to IRA providers and money managers and workers themselves that typically pushes legislation over the goal line.

Fifteen years after the auto-IRA was "invented" by Mark Ivry and David John, working respectively at Democratic and Republican-leaning think tanks, there is ample proof of concept: auto-IRA programs run by Oregon, California and Illinois have been facilitated by some 40,000 businesses on behalf of 400,000 participants who have accumulated $357 million in savings is just a few years. Despite some initial, and understandable, pushback from employers concerned that it would add to costs and burden overworked staff to comply with the state mandates, studies show that the costs were nonexistent and, thanks to smart program design and payroll software, compliance is easy. And, beyond auto-IRAs, decades of data on 401(k) plans unequivocally prove that people save way more with automatic payroll savings than any other approach.

Yet, 55 million people, mostly employed by smaller employers, or as part-time, temporary or gig workers, are not covered by any workplace program and have shockingly low savings. Under the Neal proposal, these folks would have automatically begun contributing six percent of their own pay to an IRA (usually a Roth), increasing one percent a year until reaching 10-15 percent, and invested in a target date, balanced or safety of principal fund. Of course, employers could always go one better and either add these workers to an existing or newly adopted 401(k) or a PEP or "pooled employer plan."

Robust disclosure to employees, simple contribution opt-out, election and "do-over" procedures would have been in place. Importantly, employer contributions would not be required, employers only obligation would be to deliver the withheld wages to the IRA. Employers would not be fiduciaries. The employers could choose the IRA provider, using any Internal Revenue Service-approved financial institution or an existing state auto-IRA program. (Note: there is room for improvement in the Neal proposal, including imposing fiduciary standards on the IRA providers and relying more on state programs.)

So, with proof of concept, bipartisan support and no cost (without the savers and employer tax credits), what's the problem?

Savings take time. Fifty-five million is a lot people, but uncovered workers are largely lower-paid. Based on the experience of the three active state-auto-IRA programs – Oregon, Illinois and California, about 70 percent of eligible employees would contribute some $110 plus a month. Even though the aggregate numbers would be huge, it will take some years for these IRAs to reach critical (profitable) mass. No instant profits for IRA providers. From the workers perspective, user-friendly savings vehicles are not very sexy, because, again savings takes time to build compared with the immediacy of concerns like COVID-19, health care, education and student loans. Plus, voters are more blasé to not getting a new program verses the takeaway of something that exists.

Rumor has it that the Neal proposal will be added to the Secure 2.0 bill. But, like Lucy holding the football for Charlie Brown to kick, I do not have much faith in passage through a large reform legislation, especially with the approaching midterm elections. Instead, Congress needs to focus on this single and simple good idea and pass a national savings law. Although it will take years to have a meaningful impact and probably will not further anyone's political career, their children and grandchildren will thank them. Take the Neal language, add some basic fiduciary protections and just say yes.

The views set forth herein are the personal views of the author and do not necessarily reflect those of the law firm with which he is associated.

David E. Morse
Editor-in-Chief
K&L Gates LLP
New York, NY

Wolters Kluwer