

# Fact Sheet



U.S. Department of Labor  
July 13, 2015

## White House Conference on Aging

### Department of Labor Deliverables

- State Savings Initiatives
- Annuity Selection Safe Harbor
- Announcements Regarding Health Care Career Pathways Programs

### State Savings Plans

The President today directed the Department of Labor to develop a regulation to support the growing number of States trying to promote broader access to workplace retirement saving opportunities for America's middle class workers. About one-third of American workers lack access to a retirement plan at work. For older Americans, inadequate retirement savings can mean sacrificing or skimping on food, housing, health care, transportation, and other necessities. Inadequate retirement savings places greater stress on Social Security and other state and federal efforts to guarantee a level of economic security for older Americans. The regulation that the Department will propose by the end of 2015 will clarify how states can move forward with state-sponsored retirement savings programs, including with respect to requirements to automatically enroll employees and for employers to offer coverage, in ways that are consistent with federal laws governing employee benefit plans.

### Recent State Developments & Employee Retirement Income Security Act Preemption

- States have a substantial interest in taking steps to address the problem of inadequate retirement savings and to protect the economic security of their residents.
- Concerned over the low rate of savings among American workers, some state governments have already passed laws to expand access to retirement savings programs for workers.
  - Some states have passed laws to set up state-based savings plans and require employers not currently offering workplace plans to automatically enroll employees into IRAs.
  - Some states are looking at ways to encourage employers to provide coverage under state-administered 401(k)-type plans.

- Others have adopted or are considering approaches that combine several retirement alternatives including IRAs, 401(k)-type plans and the Treasury's new starter savings program, *myRA*.
- President Obama has long supported federal legislation that would automatically enroll new workers into payroll deduction IRAs if they lack access to a 401(k)-type plan through their employer. In addition to pushing hard for improvements at the federal level, the Department is taking this step to help state legislators who are eager to create savings opportunities for workers in their state.

## Legal Background

- One of the biggest problems states face in expanding retirement savings options is uncertainty about the extent to which the federal [Employee Retirement Income Security Act](#) (ERISA) will preempt or nullify their efforts.
- Although the federal courts, not the Department of Labor, are the ultimate decision-makers about the extent to which a particular state law is preempted (or nullified) by federal pension law, ERISA preemption should not be an insurmountable impediment to the states' good faith efforts to bolster the retirement security of their workers.
- The Department's proposed regulation is part of the Administration's effort to find ways to make the state and federal laws work together to achieve the common goal of encouraging and rewarding expanded retirement savings.
- The Department already has a safe harbor regulation in place that says payroll deduction IRAs in private sector workplaces are not ERISA-regulated employee benefit plans so long as certain conditions are met.
- While some have argued that state initiatives fit into the safe harbor, others have argued that they do not.
- A new regulation just for state sponsored programs can address that question, while mitigating the ERISA preemption risk for states, employers, and others involved in state savings initiatives.

## Clarification of Annuity Selection Safe Harbor

Workers today face greater responsibility for managing their assets for retirement, both while employed and during their retirement years. This greater responsibility is primarily a result of the move away from defined benefit plans (traditional pensions) to defined contribution plans (401(k)-type plans).

In a defined benefit plan, the workers' retirement benefits are typically a specified monthly payment for life. In such a plan, an employer or insurance company, rather than the workers, take on the risk of investment loss, and workers do not run the risk of exhausting their retirement savings. But in a defined contribution plan, workers' benefits are dependent on the success of

their investments, and they often receive their accumulated savings in a lump sum, which they then must manage for the rest of their lives.

Lifetime income options like annuities provide a regular stream of income regardless of lifespan. Yet fewer than one in five defined contribution plans offer annuities, with the share falling sharply over time.

As part of a broader initiative designed to increase awareness and availability of lifetime income options in defined contribution plans, the Department of Labor's Employee Benefits Security Administration today published a Field Assistance Bulletin clarifying the duty of an employer in selecting and monitoring an annuity provider for benefit distributions from 401(k) and other defined contribution plans under its Annuity Selection Safe Harbor regulation. The Bulletin is issued in response to questions about the extent of employers' obligations, and provides guidance regarding these issues, including the application of ERISA's statute of limitations to claims relating to annuity selection. Specifically, the guidance addresses concerns about liability by clarifying that an employers' fiduciary duty to monitor an insurer's solvency generally ends when the plan no longer offers the annuity as a distribution option, not when the insurer finishes making all promised payments. The guidance should encourage more employers to offer lifetime income annuities as a benefit distribution option in their 401(k)-type plans.

## **Announcement Regarding Health Care Career Pathways Programs**

Under Workforce Innovation and Opportunity Act, the Department of Labor (DOL), in coordination with the Departments of Education (ED) and Health and Human Services (HHS), is required to conduct a study that will develop, implement, and build upon career advancement models and practices for low-wage health care providers or providers of early education and child care.

The Department of Labor today announced two efforts to achieve this goal:

- 1.** DOL is working with ED and HHS to document and synthesize existing evidence on career pathways models and programs, and to catalog the many evaluations of career pathways models and programs that are currently underway. This synthesis and catalogue will allow us to understand what questions have been asked (and/or answered), for which populations, and where gaps in the evidence base exist. **A synthesis document will be released in late summer 2015.**
- 2.** Based on the synthesis, DOL will develop and implement a plan for filling the gaps with new research and/or additional analysis of data that has been collected under existing efforts. **This plan will be announced in the fall of 2015.**