September 2015

RETIREMENT SECURITY

Federal Action Could Help State Efforts to Expand Private Sector Coverage

GAO Highlights

Highlights of GAO-15-556, a report to the Ranking Member, Committee on Health, Education, Labor, and Pensions, U.S. Senate

Why GAO Did This Study

Millions of U.S. workers have little or no savings for retirement, potentially adding to future strains on state and national safety net programs. In addition to federal efforts, a growing number of states have proposed efforts to expand coverage in private sector workplace retirement savings programs. Other countries have also implemented similar efforts. GAO was asked to study these state and international efforts.

GAO examined: (1) recent estimates of coverage, including access and participation, as well as characteristics of workers who lack coverage; (2) strategies used by states and other countries to expand coverage; and (3) challenges states could face given existing federal law and regulations. GAO primarily used SIPP data from 2012 (the most recent available). GAO also interviewed federal officials, national industry stakeholders, and officials and stakeholders in six states (California, Illinois, Maryland, Massachusetts, Washington, and West Virginia) and three countries (Canada, New Zealand, and the United Kingdom) selected based on the range of strategies used in efforts to increase coverage and recommendations from knowledgeable stakeholders.

What GAO Recommends

GAO suggests that Congress consider providing states limited flexibility regarding ERISA preemption to expand private sector coverage. Agency actions should also be taken to address uncertainty created by existing regulations. Agencies generally agreed with GAO's recommendation. DOL plans to issue a proposed rule on state programs by the end of 2015.

View GAO-15-556. For more information, contact Charles A. Jeszeck at (202) 512-7215 or jeszeckc@gao.gov.

What GAO Found

About half of private sector workers in the United States—especially those who are low-income or employed by small firms—lack coverage from a workplace retirement savings program primarily because they do not have access. According to GAO's analysis of 2012 Survey of Income and Program Participation (SIPP) data, about 45 percent of private sector U.S. workers participated in a workplace retirement savings program—an estimate that is consistent with prior GAO work and other research. Using tax data to correct for under-reporting raised the share of workers participating to 54 percent, but still indicates many workers lack coverage. Among those not participating, the vast majority—84 percent—lacked access because they either worked for employers that did not offer programs or were not eligible for the programs that were offered, for example, because they were new employees or in specific jobs that were excluded from the program. In particular, lower-income workers and those employed by smaller firms were much less likely to have access to programs. However, among those who had access, the majority of these workers participated.

Key strategies to expand private sector coverage identified in the states and countries GAO reviewed include encouraging or requiring workplace access, automatic enrollment, financial incentives, and program simplification. For example, pending implementation, programs in two of the states GAO studied—California and Illinois—would require certain employers to automatically enroll workers in a state-run program, though workers could choose to opt-out. In the countries GAO studied, combining workplace access with automatic enrollment and financial incentives—tax preferences or employer contributions—has helped increase participation. Moreover, states and countries have tried to simplify program designs to (1) limit the responsibility and cost for employers and (2) reduce complexity, cost, and risk for workers. For example, some states intend to not only reduce burdens for employers by selecting and monitoring providers, but also reduce complexity for workers by limiting the number of investment options.

State and national stakeholders reported potential challenges with uncertainty created by the Employee Retirement Income Security Act of 1974 (ERISA) and agency regulations that could delay or deter state efforts to expand coverage. Generally, ERISA preempts, or invalidates, any state law relating to "employee benefit plans" for private sector workers, but different areas of uncertainty arise based on the details of each state effort. For example, four of the six states GAO reviewed intend to create payroll deduction individual retirement account (IRA) programs that would not be considered employee benefit plans. However, due to uncertainty created by ERISA, it is unclear whether a state can offer such programs or whether some of the program features would lead a court to find that they are, or relate to, employee benefit plans. Stakeholders also noted uncertainty caused by regulations from the Departments of Labor (DOL) and the Treasury meant to assist workers and employers. For example, DOL's regulation on payroll deduction IRAs was written before these state efforts were proposed and omits detail that, if included, could help reduce uncertainty. Given these uncertainties, states may face litigation and stakeholders noted that state programs could lose tax preferences if they were ruled preempted by ERISA.