P. MICHAEL STURLA, CHAIRMAN
414 MAIN CAPITOL BUILDING
P.O. BOX 202096
HARRISBURG, PENNSYLVANIA 17120-2096
PHONE: (717) 787-3555
FAX: (717) 705-1923

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

HOUSE DEMOCRATIC POLICY COMMITTEE
www.pahouse.com/PolicyCommittee
Policy@pahouse.net
Twitter: @RepMikeSturla

HOUSE DEMOCRATIC POLICY COMMITTEE HEARING

Topic: Retirement Security

Bald Eagle Area High School – Bellefonte, PA

July 23, 2018

AGENDA

2:00 p.m. Welcome and Opening Remarks

2:10 p.m. Keith Welks
Deputy Treasurer
Pennsylvania Treasury

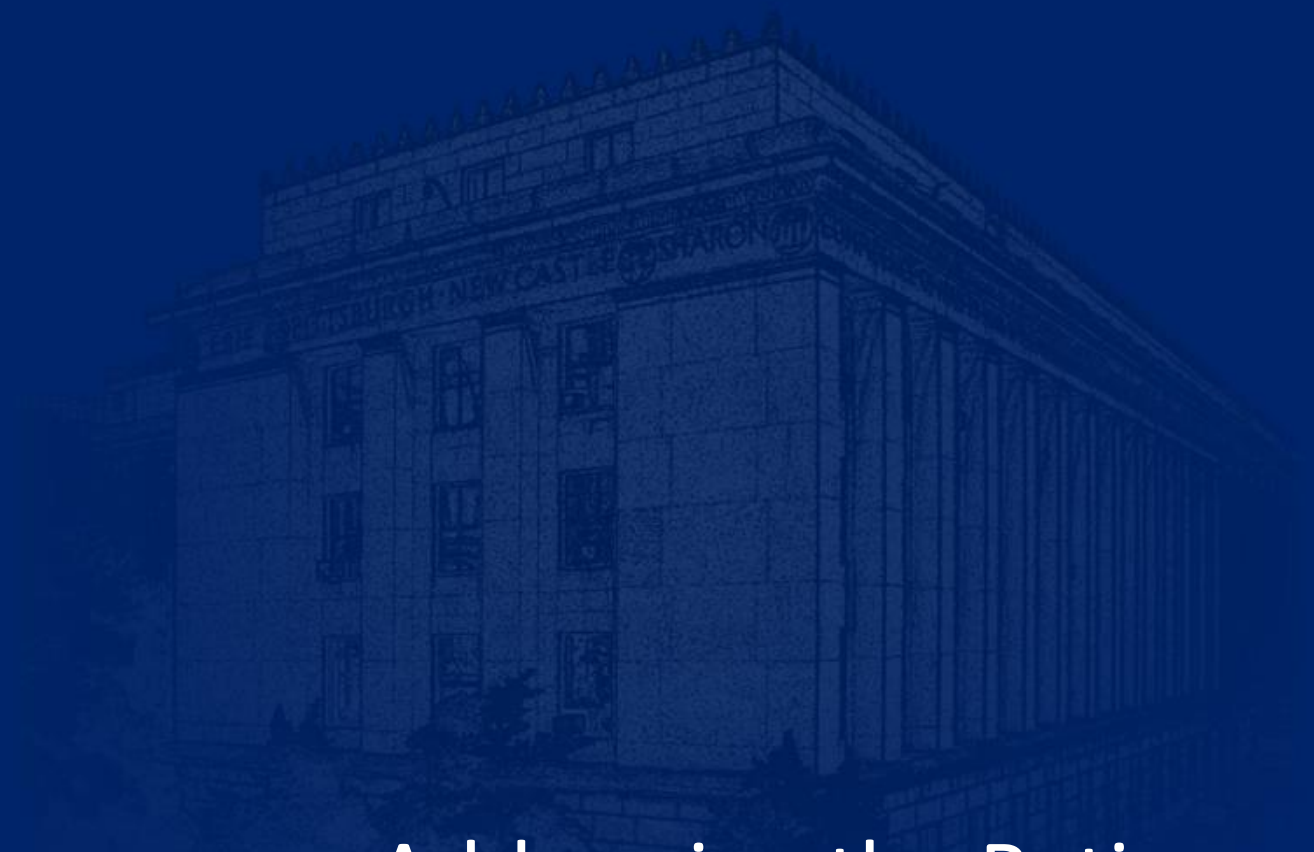
2:40 p.m. Wendy Young Carter
Vice President and DC Practice Director, Public Sector
The Segal Group

3:10 p.m. Ray Landis
Government Relations Manager
AARP Pennsylvania

3:40 p.m. Closing Remarks

JOE TORSELLA

STATE TREASURER



Addressing the Retirement Crisis:

Key Findings and Observations from the Pennsylvania Treasury Retirement Task Force Hearings

Treasury Task Force on Private Sector Retirement Security

MEMBERS

- Senator John P. Blake, Senate Finance Committee Minority Chair
- Sarah Mysiewicz Gill, Senior Legislative Representative, AARP
- Senator Scott E. Hutchinson, Senate Finance Committee Chair
- Robert C. Jazwinski, PA Institute of Certified Public Accountants
- House Representative Bernie O'Neill, House Finance Committee Chair
- Kevin Shivers, Executive State Director, National Federation of Independent Business
- Frank Snyder, Secretary/Treasurer, Pennsylvania AFL-CIO
- Joe Torsella, Pennsylvania State Treasurer
- House Representative Jake Wheatley, House Finance Committee Minority Chair

SYNOPSIS OF RETIREMENT TASK FORCE HEARINGS

- Hearing One: ***The Retirement Savings Crisis***

  Thursday, October 26, 2017, Lehigh County Government Center, Allentown, PA

  The goal of the first hearing was to provide a general overview of the private sector retirement security crisis and to discuss individual-level barriers to retirement saving.

- Hearing Two: ***Employer Perspectives on Barriers to Workplace Savings Plans***

  Friday, November 17, 2017, Allegheny County Courthouse, Pittsburgh, PA

  The second hearing held by the Retirement Task Force highlighted employers' experiences in offering their employees retirement savings vehicles. The hearing featured survey data from the Pew Charitable Trusts, testimony from employers discussing the challenges to and benefits associated with offering retirement benefits, and financial professionals who have advised employers about administering plans.

Crisis of Retirement Security

- Hearing 3: ***Fiscal Impacts of Retirement Insecurity***

  Thursday, January 25, 2018, Senate Hearing Room One, Harrisburg, PA

  The goals of the third hearing were to identify the impacts of the retirement crisis and survey the landscape of possible solutions. This hearing featured the Independent Fiscal Office (IFO) discussing Pennsylvania's aging population and the impacts of this change in demographic; Econsult Solutions, Inc., with a first-of-its-kind analysis, commissioned by PA Treasury, in identifying the costs to the state of insufficient retirement savings; and The Georgetown University Center for Retirement Initiatives (CRI) presenting an overview of state legislative action in response to the retirement security crisis.

- Hearing 4: ***Options to Expand Private Sector Workplace Savings***

  Wednesday, February 14, 2018, Senate Hearing Room One, Harrisburg, PA

  The goal of this hearing was to inform the Retirement Task Force of current state initiatives aimed at addressing the retirement crisis, including pros and cons, challenges, and lessons learned in the implementation of each of these state-sponsored plans. The Task Force heard testimony from high-level officials operating plans in three states, as well as a legal expert discussing auto-IRA in the context of the Employee Retirement Income Security Act (ERISA).

Crisis of Retirement Security

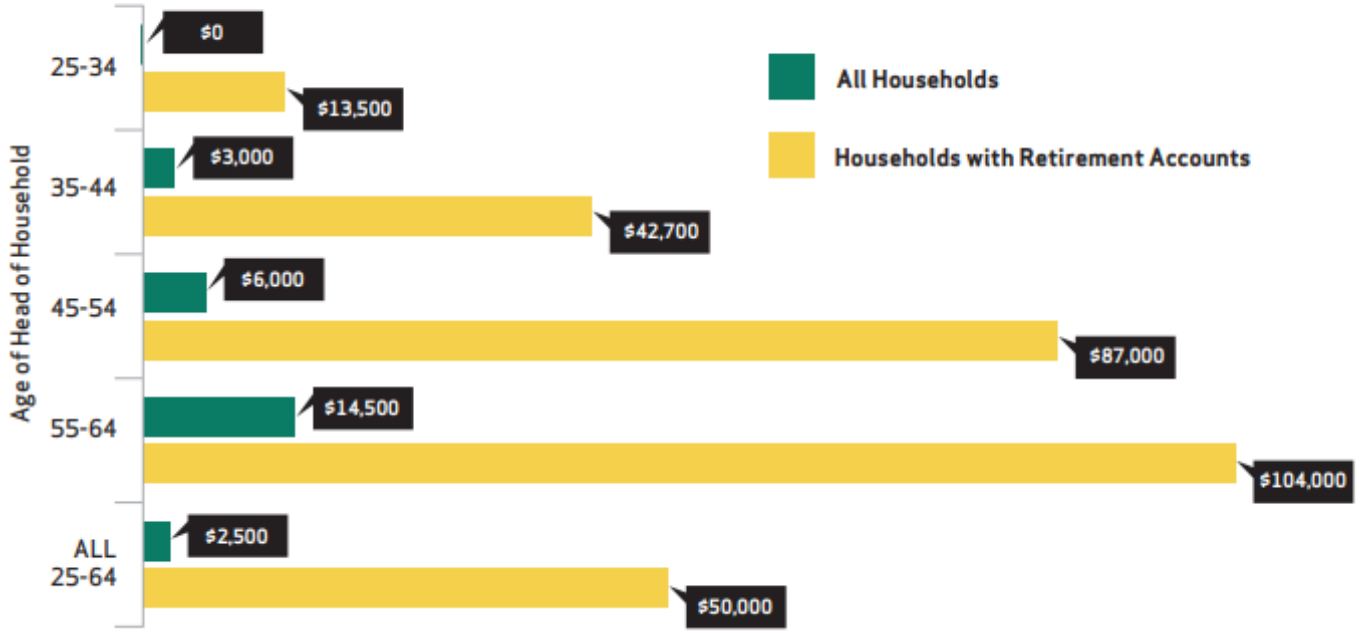
- Real and growing retirement insecurity crisis
- Why?
  - Shift from defined benefit plans to defined contribution plans
  - Worker mobility and lack of savings portability
  - Increased longevity
  - Lack of workplace access
- Also, human behavior:
  - Inertia
  - Procrastination
  - Preference for immediate gratification over long term benefits
- Significant fiscal consequences for the Commonwealth

Crisis of Retirement Security

Across the board, savings are insufficient.

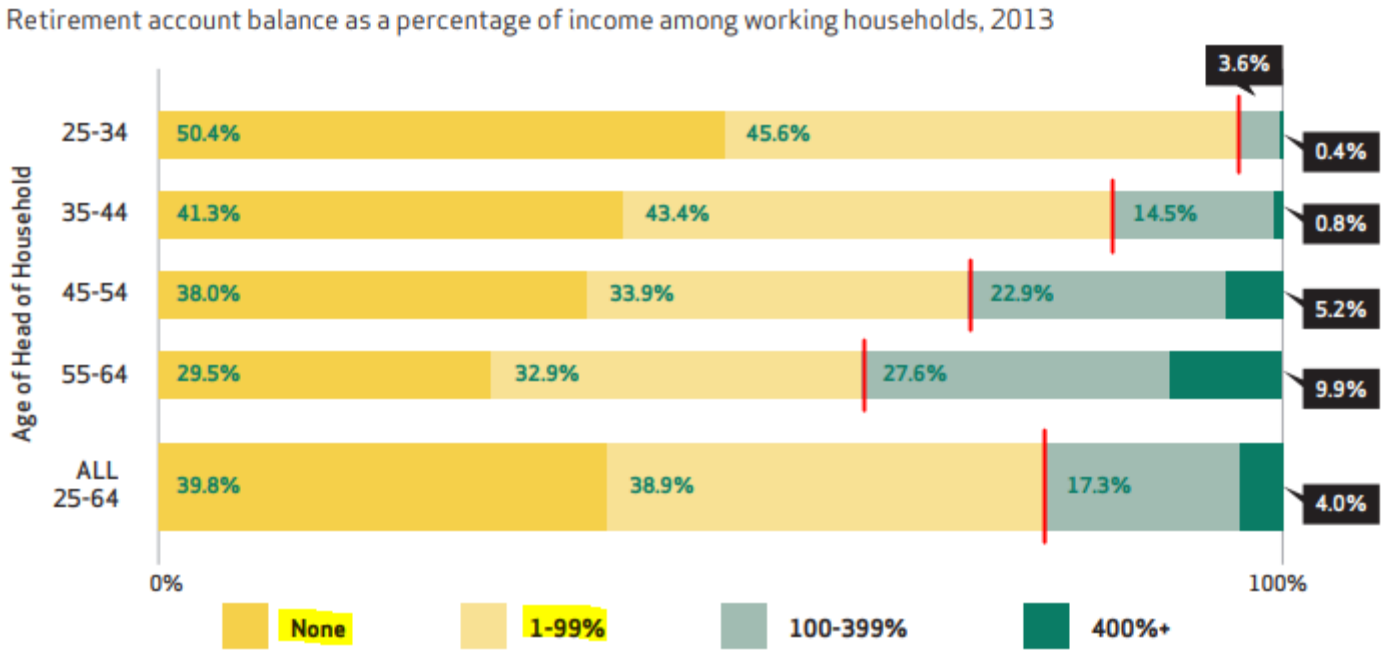
- Median working-age household = $2,500
- Median near-retirement household = $14,500

Median retirement account balances, households with retirement accounts vs. contingent median account balance for all households, 2013



Source: National Institute on Retirement Security

Nearly 4/5 working households have <1x income saved.

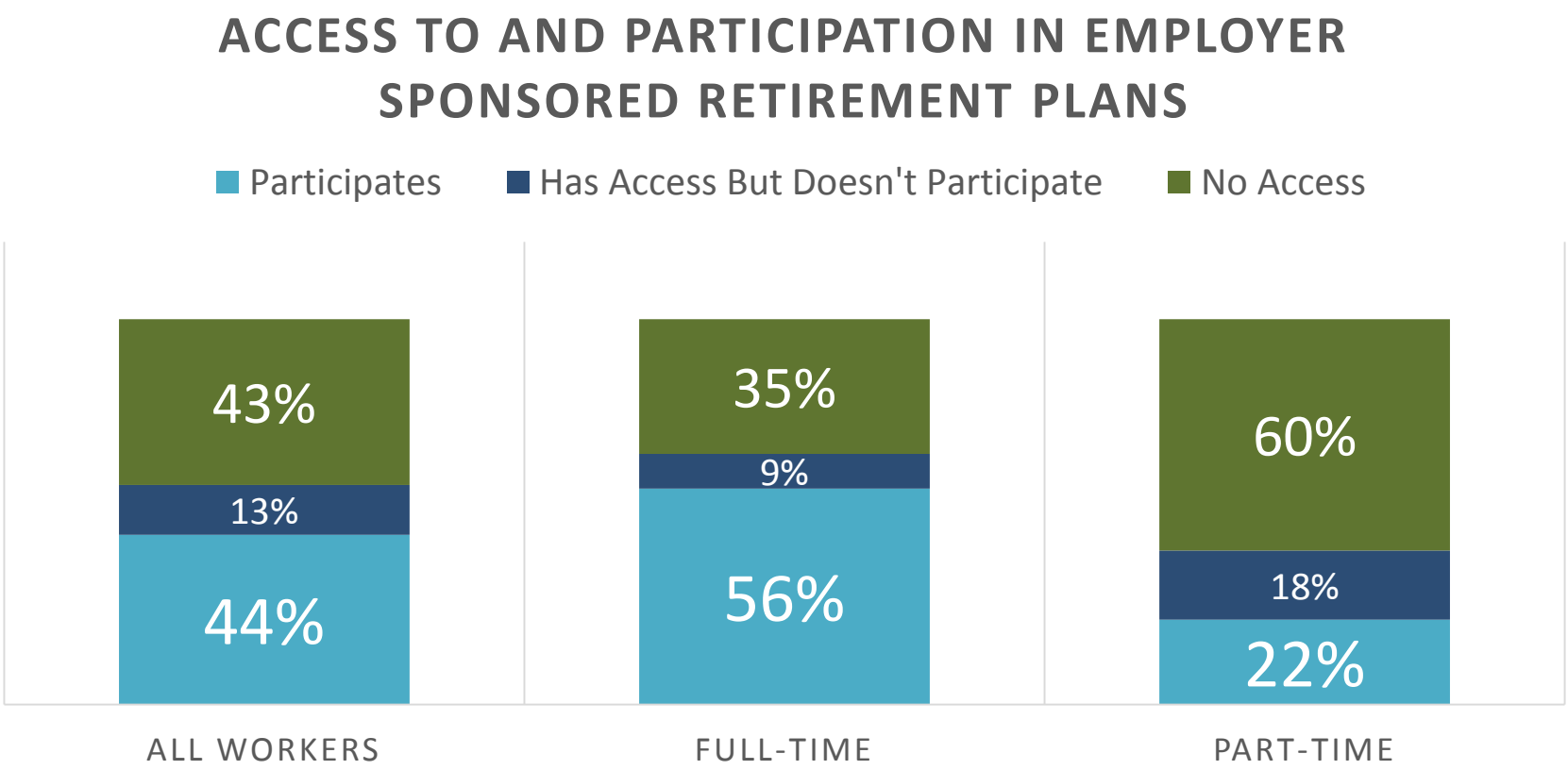


Source: Authors' analysis of the 2013 SCF. Universe is households with heads age 25-64, with total earnings over $5,000 and under $500,000 and total incomes greater than zero and less than $1 million.

Source: National Institute on Retirement Security

Crisis of Retirement Security

43% - 2.1 million people - lack access to any workplace retirement savings plan



Source: Pew Charitable Trusts for PA Treasury

Employer Perspectives

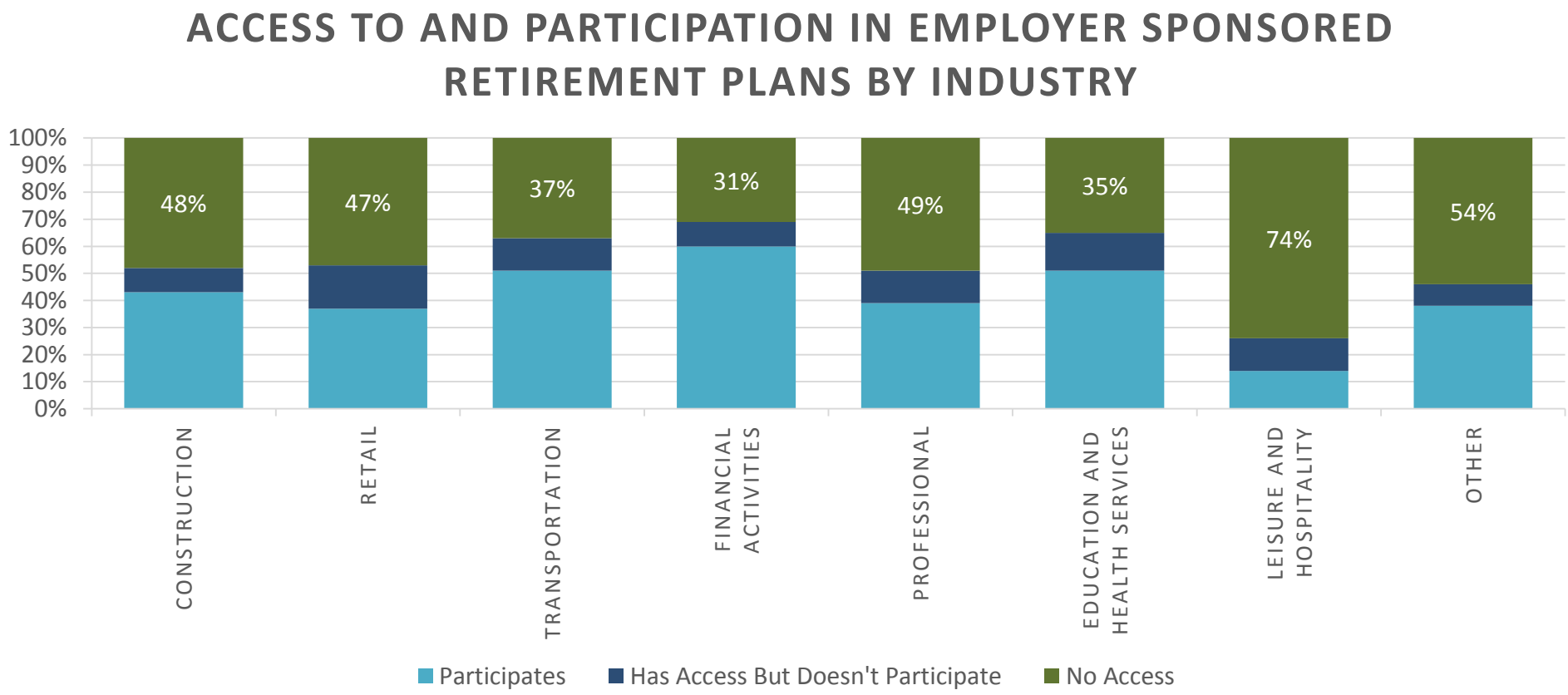
Lack of access impacts employee's at firms of all sizes

ACCESS TO WORKPLACE RETIREMENT PLANS BY EMPLOYER SIZE			
Employer Size	Access	No Access	Population Uncovered
Less Than 10 Employees	24%	76%	442,000
10 to 49 Employees	40%	60%	479,000
50 to 99 Employees	51%	49%	226,000
100 to 499 Employees	63%	37%	267,000
500 or More Employees	70%	30%	703,000

Source: Pew Charitable Trusts for PA Treasury

Employer Perspectives

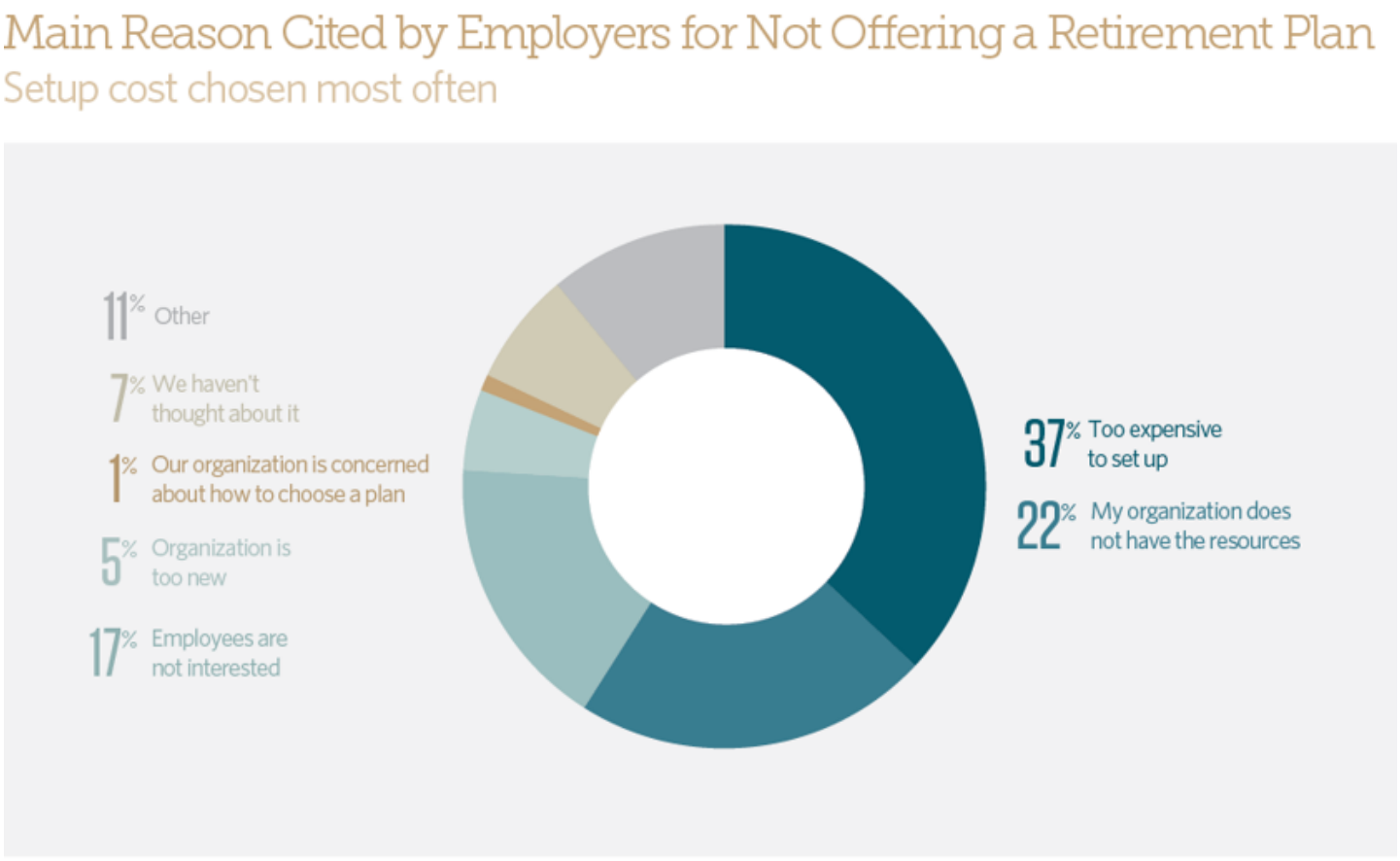
Some sectors have lower levels of access compared to others.



Source: Pew Charitable Trusts for PA Treasury

Employer Perspectives

Costs & lack of resources cited by most employers as primary barrier.



Source: Pew Charitable Trusts

Impact of the Retirement Crisis

- Even small business owners (among the most likely no to offer retirement plans for their employees) recognize the importance of retirement options for Pennsylvanians.
- In a recent survey conducted by AARP, in excess of four out of five Pennsylvania owners said that more should be done to encourage residents to save for retirement.
- In fact, 52% agreed that "a lot more" should be done to encourage savings activity.
- And the small business owners who offer retirement plans say they have good reasons to do so: 35% recognize it is the "right thing" to do, and another 24% see this benefit as important in attracting and keeping quality employees. Another 7% say it contributes to employee performance.
- Fully 86% of those surveyed agreed that the state should support a state retirement savings proposal (only 11% disagreed with the notion of a state program). More than two-thirds say they are likely to participate in such plan if it becomes available.
- These results are consistent with testimony before the Retirement Task Force from small employers who spoke of their desire for help in offering retirement plans so that they could attract and keep good employees who had other employment options.

Source: 2018 AARP Survey of Small Business Owners in Pennsylvania

Impact of the Retirement Crisis

Pennsylvania's population is **aging**.

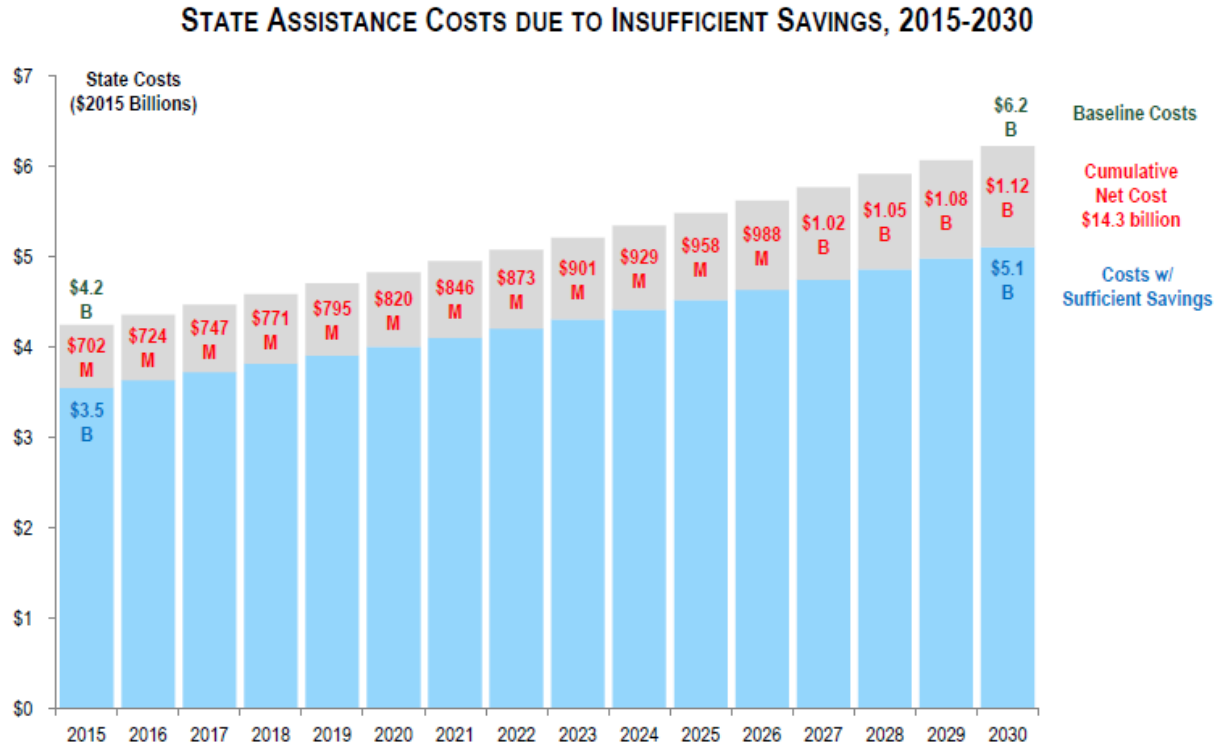
Age Group		PA Residents (000s) 2017	PA Residents (000s) 2025	Change (000s) Number	Change (000s) Percent
0 to 19	School	3,010	2,981	-29	-1.0%
20 to 64	Working	7,510	7,407	-103	-1.4%
65 to 74	Seniors	1,286	1,556	270	21.0%
75 to 84	Retirees	665	905	240	36.1%
85 or older	Elderly	335	360	25	7.5%
Total		**12,806**	**13,209**	**403**	**3.1%**
65 or older		2,286	2,821	535	23.4%

Source: U.S. Census Bureau. Data for 2017 and 2025 are estimates from the IFO Economic and Budget Outlook (Nov. 2017).

Impact of the Retirement Crisis

Insufficient savings will increase Commonwealth means-based assistance costs.

Net state assistance costs grow to $1.1 billion by 2030, and total a cumulative $14.3 billion from 2015-2030



Source: Econsult for PA Treasury

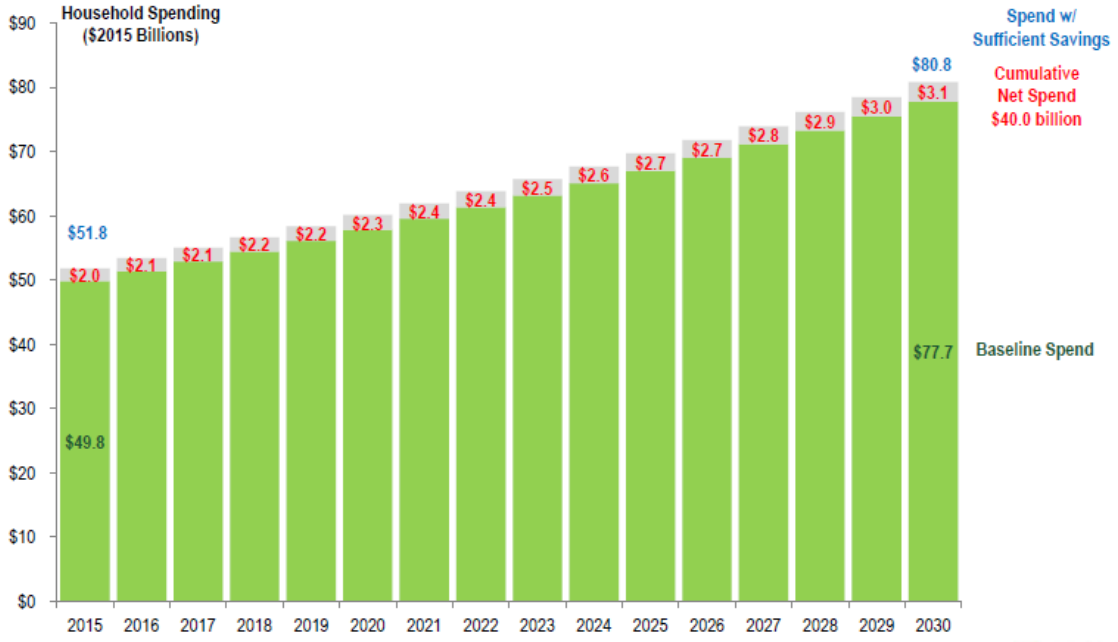
Impacts of the Retirement Crisis

Insufficient savings will cost the Commonwealth in lost economic activity.

Household Spending: 2015-2030

Net expenditure losses grow to $3.1 billion by 2030, and total a cumulative $40.0 billion from 2015-2030

REDUCED HOUSEHOLD SPENDING DUE TO INSUFFICIENT SAVINGS, 2015-2030

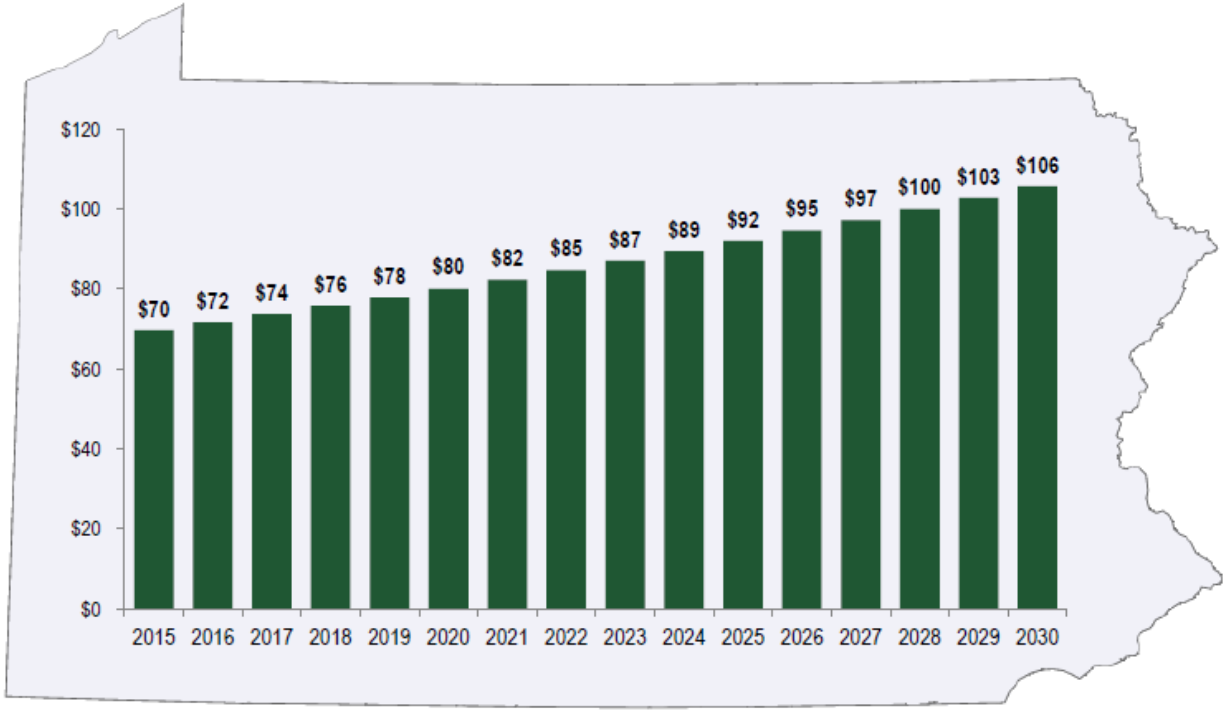


Source: Econsult for PA Treasury

Impacts of the Retirement Crisis

Insufficient savings will cost the Commonwealth in lost tax revenue.

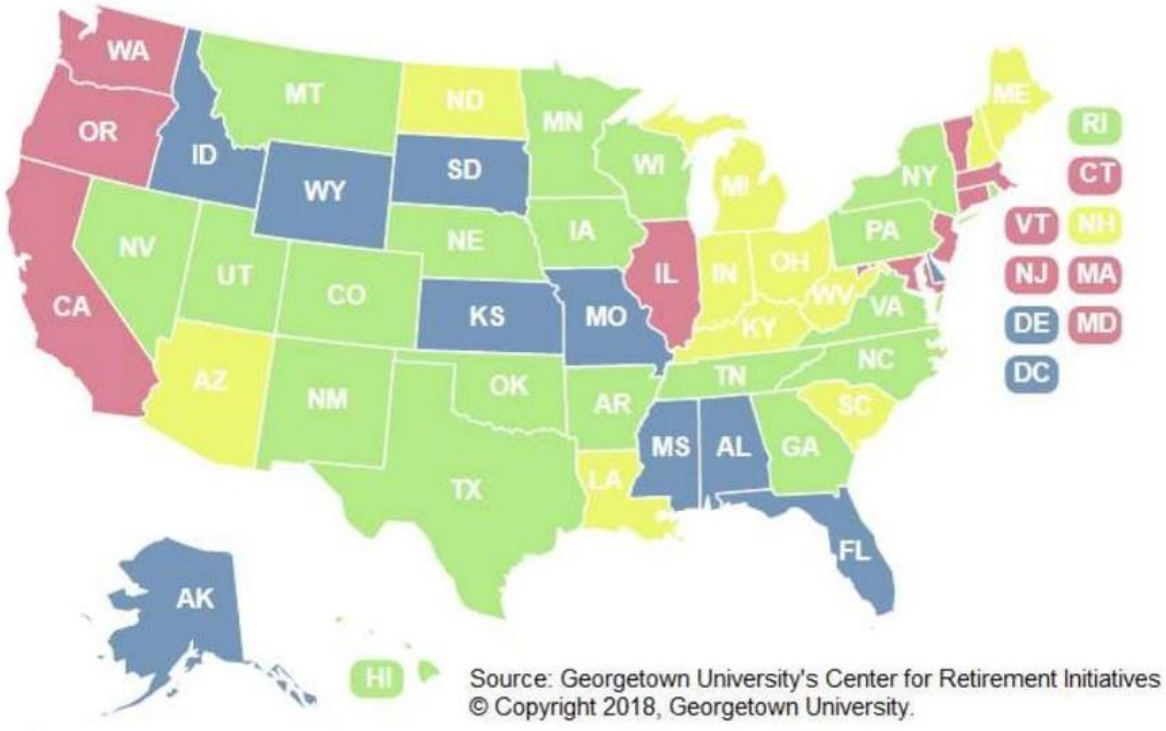
Lost tax revenue grows to $106 million by 2030, and totals a cumulative $1.4 billion from 2015-2030



Source: Econsult for PA Treasury

A Path Forward?

States stepping up to find a solution to the crisis.



= legislative proposal and/or study in 2017
= laws enacted (2012-present)
= recent state efforts (2012-2016)

- 2 states enacted 401(k) MEP (VT & MA)
- 2 states enacted Marketplace (WA & NJ)
- 5 states enacted Auto-IRA (CA,CT,IL,MD,OR)

A Path Forward?

USA Retirement Plan

- Focus to provide lifetime retirement income.
- Developed by Dick Sawhill and colleagues in 2014
- State selects Board of Trustees.
- Contributions invested into Accumulation Fund, with a 6% target rate of return.
- Invested contributions transferred to Annuity Fund upon retirement.
- Automatic 2% COLA.

A Path Forward?

- The program should be available at as many workplaces as possible that do not already offer a retirement savings opportunity.
- The program should place the minimum obligations and costs on employers consistent with achieving program objectives.
- To maximize participation, employers should automatically enroll employees unless they elect to opt-out of the program.
- Employees enrolled in the program should have defined default deductions from their salary contributed by their employers to their retirement accounts unless they elect to opt-out of the program or select a different amount to be deducted and contributed.
- Default deduction amounts should automatically increase over time.
- Employers should not be required to contribute to employee retirement accounts.

A Path Forward?

- Individuals who do not have employers should be eligible to enroll in the program.
- Program design should be as simple as possible, investment and other decisions should be kept to a minimum, and funds should be pooled and managed to prudently maximize returns and minimize participation fees.
- Program accounts should be portable, able to move with employees and – when appropriate – capable of continuing to receive employee contributions after they leave their present job.
- The program should promote financial literacy among employees, especially with regard to the benefits of long-term investing and the challenges of managing an account balance to provide a reliable income stream throughout retirement.

A Path Forward?

- The program should offer, and encourage the use of, investment options that provide an assured retirement income for the remainder of an individual's life once he or she retires.
- The program should be financially self-sustaining, with administrative and operational costs paid from employee contributions and/or retirement accounts.
- The state should have no responsibility for assuring or protecting any investment performance for employee retirement accounts.

"The automatic IRA approach would offer most employees not covered by an employer- sponsored retirement plan the opportunity to save through the powerful mechanism of regular payroll deposits that continue automatically." - David C. Johns, formerly of the Heritage Foundation

JOE TORSELLA

STATE TREASURER

PRIVATE SECTOR SAVINGS INITIATIVES
A Win-Win Opportunity

July 23, 2018

Wendy Carter
Defined Contribution Director
Segal Consulting

Segal Consulting

In the Beginning…The Starting Point

Percentage of Private Sector Workers Whose Employers Offer a Retirement Plan

Source: U.S. Census Bureau *Current Population Survey (CPS),* March 2014 Supplement, using DataFerrett, the Census Bureau's data analysis and extraction tool.

Will Building a Better Base for Retirement Have Other Rewards?

Consider this:

50%

of all full-time employees

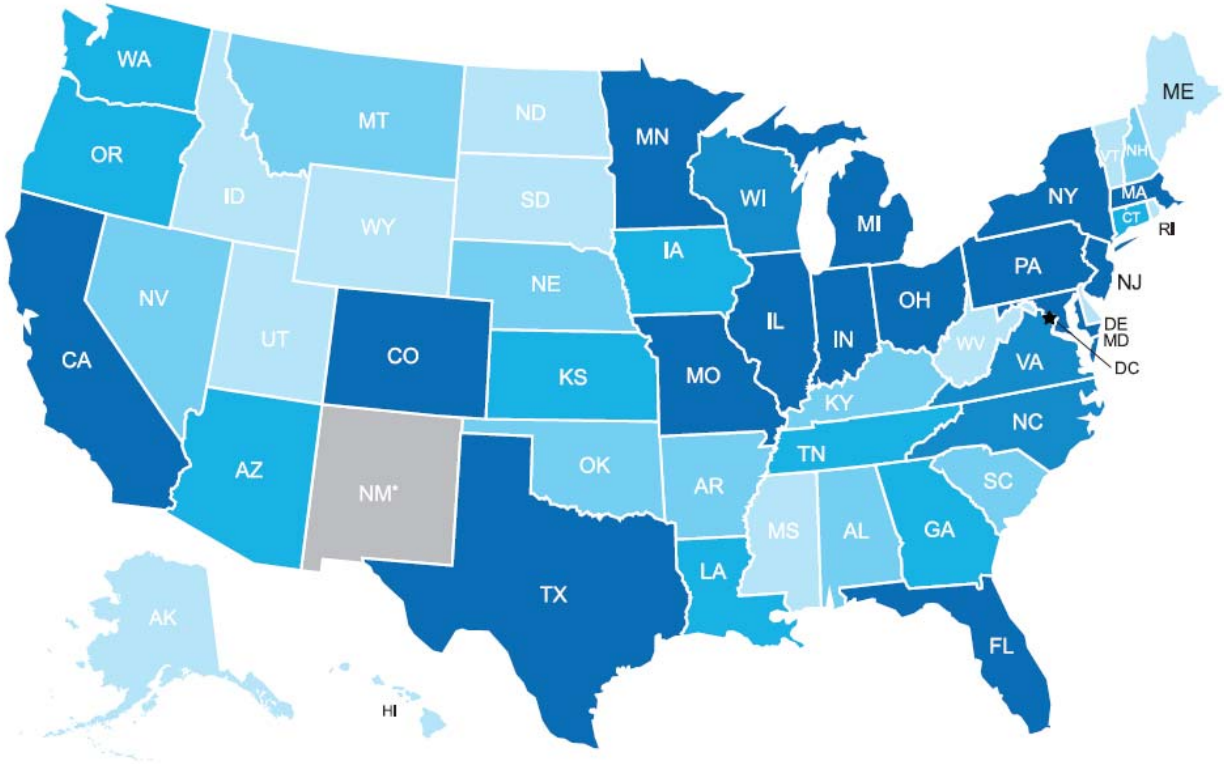
are SAVING NOTHING

for RETIREMENT

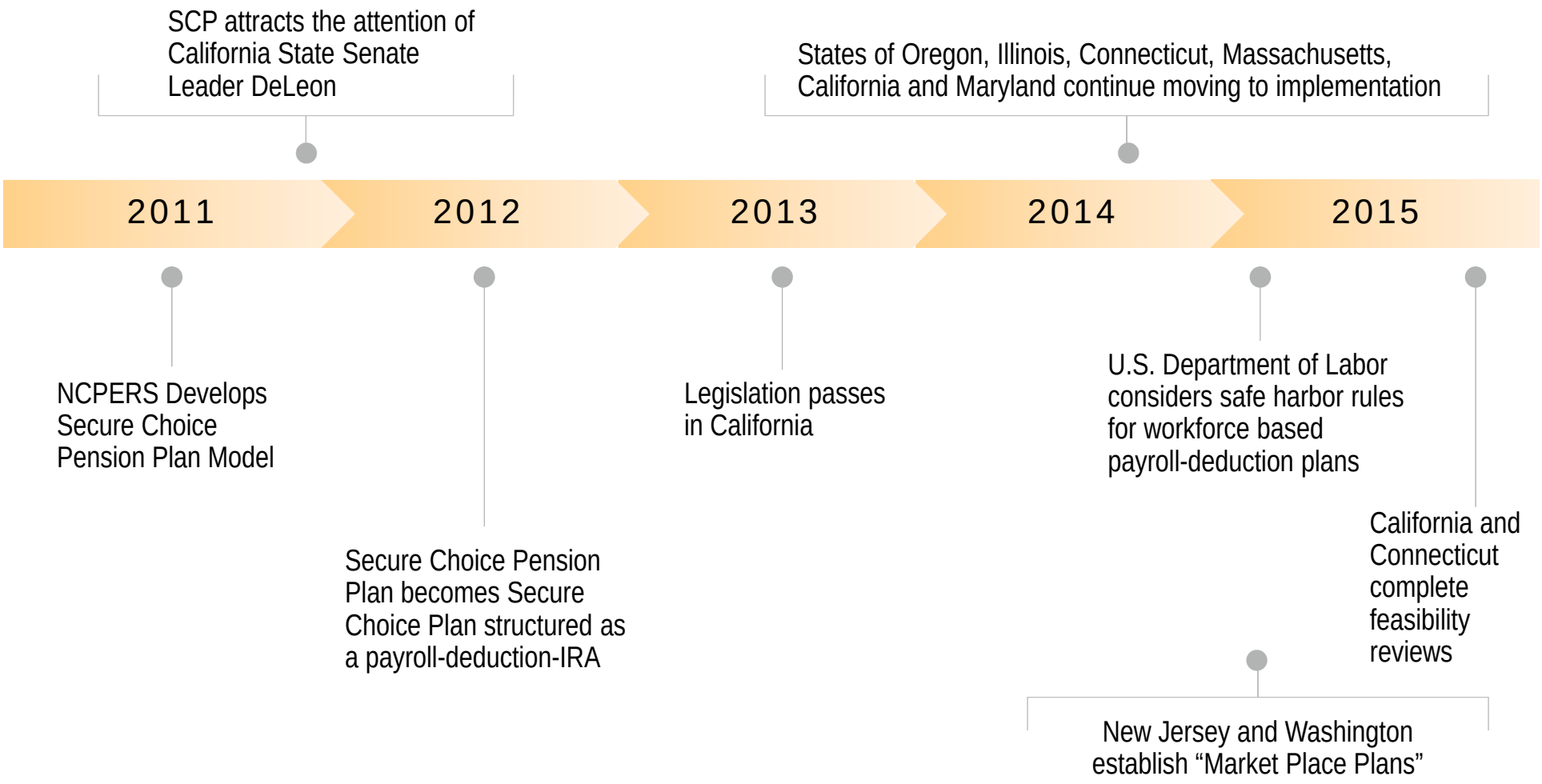
- If these employees retire at age 65 with only Social Security, many will fall below eligibility limit for low-income social services
- They will be potentially eligible for various social subsidies including housing, food, transportation and Medicaid
- Of these, Medicaid is one of the fastest growing segments of a state's budget

If a state were to implement an SCP-type retirement program and some modest number of employees availed themselves of it, what might the impact be on Medicaid expenditures?

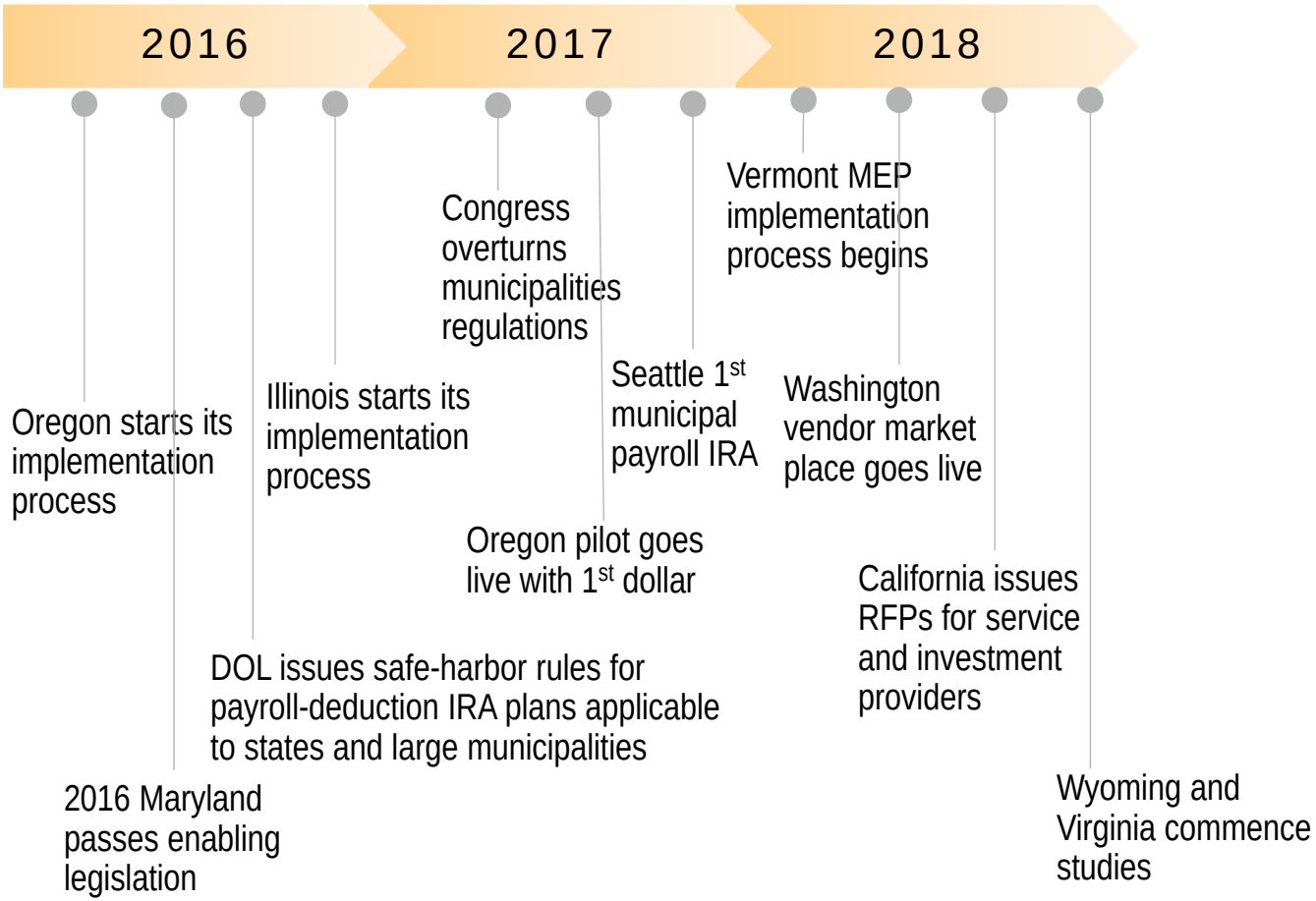
Billions Potentially Saved on Medicaid Nationwide



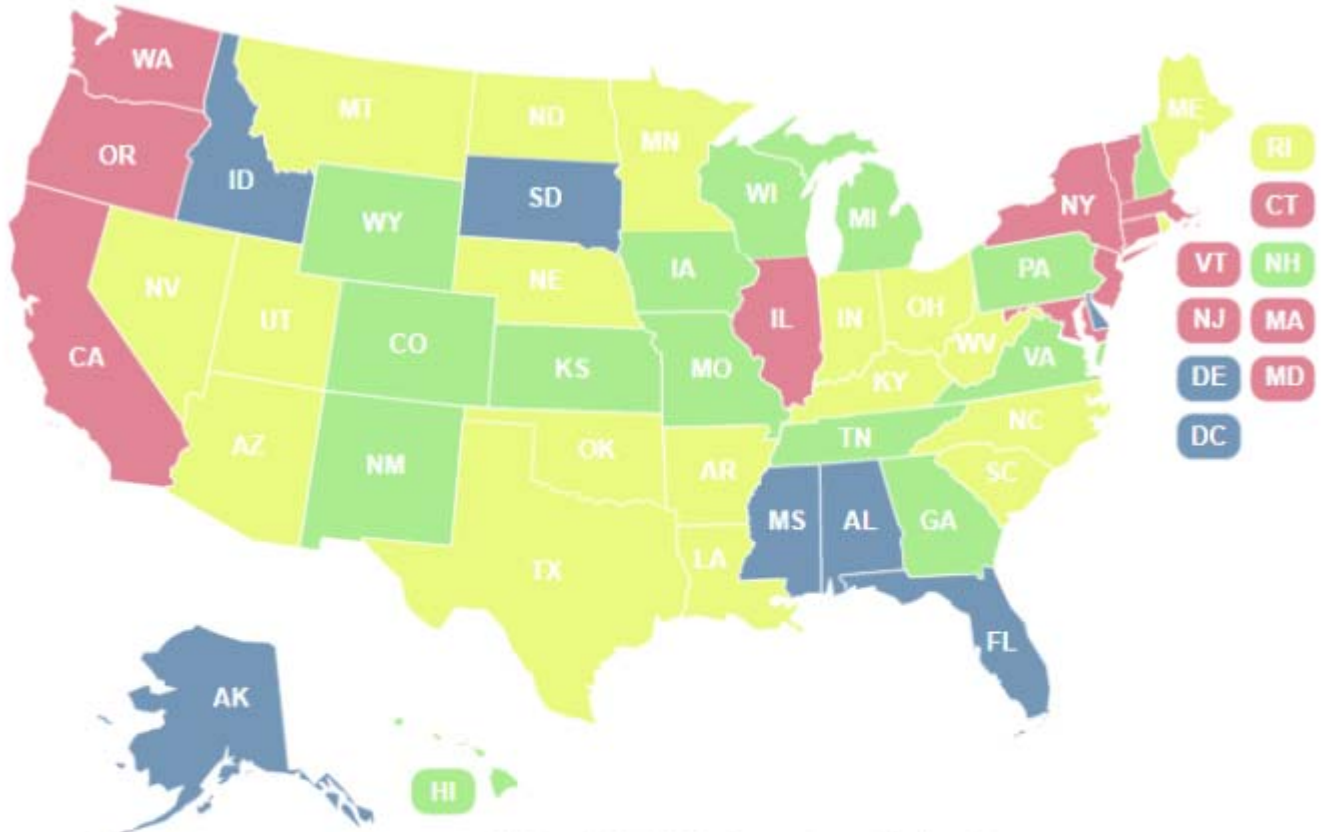
Evolution of Secure Choice Plans…
Five Years in the Making



Evolution of Secure Choice Plans…
Five Years in the Making



“Secure Choice” Environmental Update



Source: Georgetown University’s Center for Retirement Initiatives

= legislative proposal and/or study in 2018

= laws enacted (2012-present)

= recent state efforts (2012-2017)

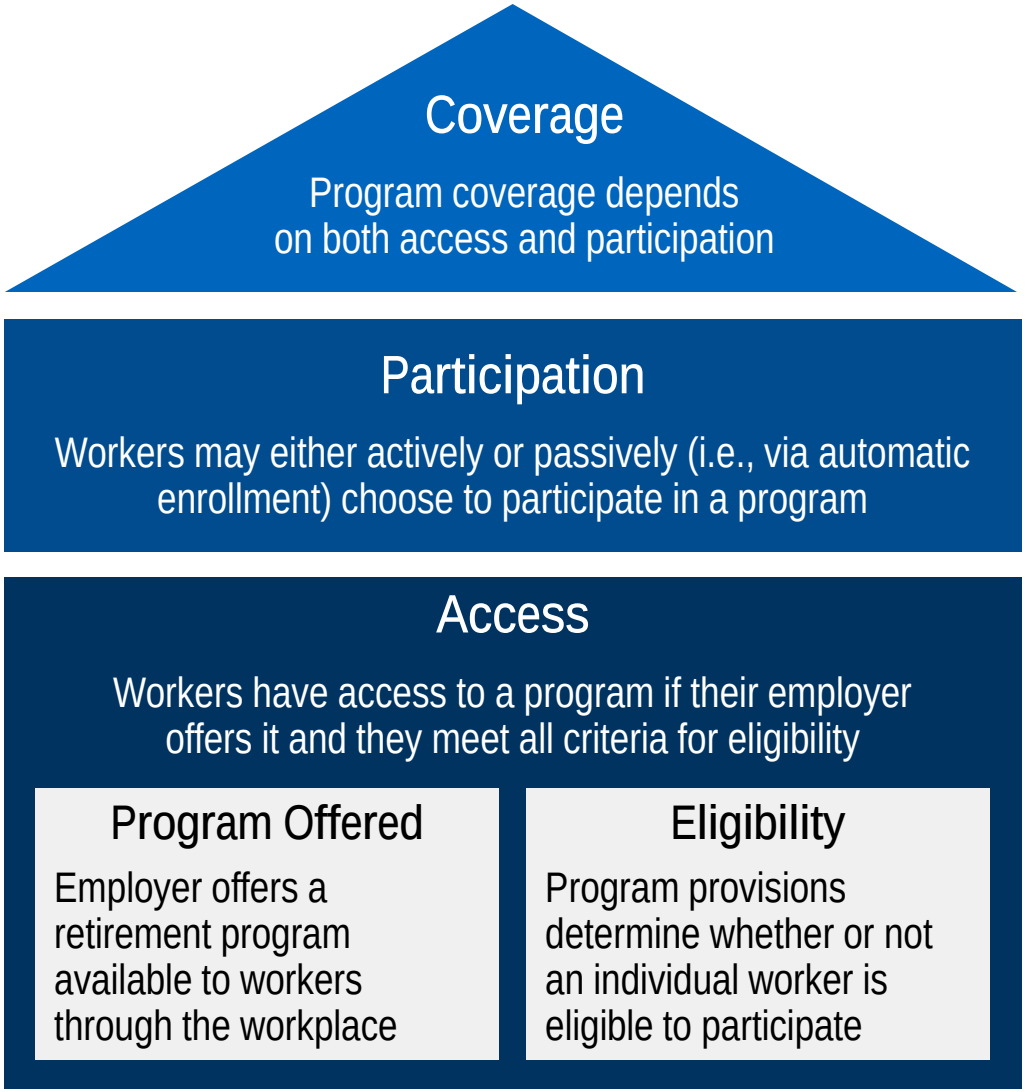
= no recent state efforts

What Do Employees Think?

- PEW* survey of employees re: auto-IRAs
  - About 75% would stay in the program if auto-enrolled
  - Only about 10% would opt out
  - About 10% would increase contributions from the default rate
- Flexible features are a big hit
  - Keeping account even if change jobs (84%)
  - No tax penalty on withdrawal of contributions (81%)
  - Target date fund investment option (73%)
- Contributions
  - Little difference for a default rate of 3% vs. 6% (81% vs. 88%)
  - Auto-enrollment is popular with 89% supporting the feature
  - Auto-escalation is supported by 68%

*PEW Charitable Trusts, 2017

Building Blocks of Program Design



Source: GAO analysis. GAO-15-556

Program Design Effort

- Start with the goal—increasing retirement security

- Consider the biggest hurdles
  - Awareness
  - Inertia
  - Financial feasibility
    - The long-term funding and break-even point for the program
    - Keeping program administration simple and costs reasonable
    - Walking before you run
- Focus on your core guiding principals
  - Education and marketing outreach must start at the “grass roots”
  - Simplify employer effort (initial set up and ongoing administration)
  - Maximize simplicity and minimize administrative costs
  - Use auto-features to enroll and increase contributions
  - Promote administrative efficiency by reducing variability and leveraging technology
  - Maximize the “customer” experience and the use of technology
  - Consider new solutions as by definition any program necessitates a hybrid of retail and institutional capabilities

Roles of the Parties
Contributing to Success

Government Sponsor

- Governs the Program and sets policy
- "Markets" the Program
- Defines and communicates:
  - The benefits
  - How it works
  - What is required
- Provides Program oversight to ensure compliance
- Hires recordkeeper and investment partners to best meet the needs of all parties at a reasonable cost
- Handles complaints

Employers & Employees

- Employer signs up for the Program via prescribed process
- Employer facilitates employee enrollment
- Employer deducts contributions and remits data in a timely manner and reports demographic changes

- Once account is established, employees access account with the service provider
- Employees access support services through a variety of mediums
- Educational services encourage interaction and planning for retirement

Service Provider

- Delivers services, investments and educational tools that support the needs of each party
- Provides efficient and intuitive processes to support the design of the Program
- Effectively communicates with each party throughout the lifecycle of the Program
- Ensures transparency to drive continuous improvement

Increased Retirement Income is Good for All

- Retirement income allows retirees to remain an active part of society
- This income has economic ripples that go beyond the individual and creates an impact that totals 2 to 3 times the amount of payment
- Reducing reliance on social welfare programs frees up capital for other needed public projects
- SCP-type programs can make the state tax dollar go further

State Retirement Savings Initiatives
A Win-Win Opportunity for All.

TESTIMONY OF RAY LANDIS

ADVOCACY MANAGER

AARP PENNSYLVANIA

REGARDING RETIREMENT SECURITY

BEFORE THE PENNSYLVANIA HOUSE OF REPRESENTATIVES DEMOCRATIC POLICY COMMITTEE

BELLEFONTE, PENNSYLVANIA

JULY 23, 2018

Thank you for offering me the opportunity to discuss retirement security with the House Democratic Policy Committee today. My name is Ray Landis, and I am the Advocacy Manager for AARP Pennsylvania, representing our 1.8 million members in the Commonwealth.

You might ask why is AARP concerned about this issue? Aren't AARP members already retired? An easy answer to that question would be, well, we hope that younger people will become AARP members when they're eligible, so we're planning for the future. But the truth is many of our current members are still working, especially those that are between the ages of 50 and 64, and the troubling aspect is that many of them won't have the savings they'll need in order to retire. For many, that will mean they'll need to keep working, but for others who won't have that option, it could mean they'll be forced to rely on the programs we have in Pennsylvania that benefit older Pennsylvanians. Whether those programs are Medicaid payments for health and long-term care services, or lottery-funded programs that help older Pennsylvanians remain at home and in their communities, we know that funding for them is already strained. And with the demographics of the Commonwealth set to undergo a dramatic change, with the percentage of people over the age of 65 rising from 17.5 percent of our population today to 25% of the population by 2025, the lack of retirement savings for this segment of the population is going to impact all of us, whether we're older or younger.

AARP's Public Policy Institute issued state fact sheets in 2015 that calculated 44% of Pennsylvania's private sector workers worked for a business that did not offer a retirement plan. A majority (63%) of them work for a business with less than 100 employees. It's through workplace deductions that Americans will save for retirement – AARP calculates that workers are 15 times more likely to save for retirement if can do so at work.

Here are some other sobering numbers – the average household has only $2,500 saved for retirement. If you restrict these calculations to the average household near retirement age, the savings only increase to $14,500. What about Social Security, you may ask? The average Social Security benefit is about $18,000 per

year. Meanwhile, older American families spend an average of $20,000 on food, utilities, and health care alone.

So that is a rather bleak picture. But something can be done, and that's to create a way for employees that don't have a retirement savings plan at work to gain access to one. AARP calls the concept work and save. House Bill 465 is one way to institute such a plan, and we're pleased that Representative Hanna and the co-sponsors of this bill have introduced it because we need to have this issue out on the table so it can gain the momentum it needs to go from a concept to reality.

Other states are ahead of Pennsylvania on this issue. Oregon's plan is now producing results. Illinois, Maryland, California, and a couple other states have laws set to go into effect in the near future. In all, more than 30 states, including Pennsylvania, are discussing the concept. We have the opportunity to learn from these other states and enact a program that will be the best solution for Pennsylvania employees and employers.

We've talked about how a retirement savings plan can benefit employees who can start to save for retirement. But a work and save plan can benefit employers too – and they recognize that fact. AARP surveyed Pennsylvania small businesses earlier this year. 70 per cent agreed the Commonwealth should do more to encourage residents to save for retirement. 57 per cent expressed concern regarding their employees having enough money saved for retirement. But most Pennsylvania small businesses don't offer a workplace savings option and most say it is because offering a retirement savings plan would be too costly. I've included a link to the full survey in the written copy of my testimony.

https://www.aarp.org/research/topics/economics/info-2018/pennsylvania-sbo-survey.html?CMP=RDRCT-PRI-RETIREMENT-041118

A key element of a work and save plan is that is won't cost employers anything, other than to initiate the deduction from the employee's paycheck. And having retirement savings is likely to give many employees the security they need to continue working at a job they enjoy, saving employers the costs of hiring and training new workers.

Retirement security is an issue that should concern everyone in Pennsylvania. The retirement income tomorrow's retirees will access will look very different

than what today's retirees rely on. We need to take the necessary step of ensuring more Pennsylvania employees can easily save for retirement. The sooner we do this the better, because even someone in their 50s can accumulate thousands of dollars for retirement if they have a way to start saving today. AARP applauds Treasurer Torsella for drawing attention to this issue by the creation of his Retirement Task Force, and we hope that through the Task Force's efforts and hearings such as this one we can draw greater attention to the need to establish a retirement savings opportunity for all Pennsylvanians.

Thank you again for allowing me to be here today and I'd be glad to answer any questions you may have.

Fact Sheet: Pennsylvania

Workplace Retirement Plans Will Help Workers Build Economic Security

David John and Gary Koenig
AARP Public Policy Institute

Access to an employer-based retirement plan is critical for building financial security later in life. Yet, about 44 percent of Pennsylvania's private sector employees—roughly 2,182,000—work for an employer that does not offer a retirement plan. Significant numbers of workers at all levels of earnings and education do not have the ability to use payroll deductions to save for retirement.

Currently in Pennsylvania, workers of larger employers are more likely to have a retirement plan than workers of smaller employers. The probability of having a workplace retirement plan also differs considerably by workers' earnings level, education, and race and ethnicity. The lack of ability to participate in an employer-provided retirement plan, however, spans all levels of education and earnings, and cuts across all groups.

Pennsylvania's Situation by the Numbers

About 44 percent of Pennsylvania workers ages 18 to 64 in the private sector work for businesses that do not offer a retirement plan.

- **Small-business employees are less likely to have a plan:** Workers in Pennsylvania businesses with fewer than 100 employees are much less likely to have access to a plan (63 percent) than workers in larger businesses (32 percent). In raw numbers, about 1,175,000 small-business employees do not have access to a retirement plan compared with about 1,006,000 in businesses with 100 or more workers.
- **Workers at all education levels do not have a plan:** About 66 percent of workers who did not have a high school degree did not have an employer-provided retirement plan—a much higher percentage than workers with some college (46 percent) or a bachelor's degree or higher (33 percent). But in raw numbers, workers with at least some college who did not have access to an employer plan exceeded those workers without a high school degree who did not have access to an employer plan (1,135,000 versus 213,000).
- **Workers at all earnings levels do not have a plan:** More than 1,263,000 of Pennsylvania employees with annual earnings of $40,000 or less did not have access to a workplace plan. These workers represent about 74 percent of the 2,182,000 employees without an employer-provided retirement plan.
- **Access to a plan differs substantially by race and ethnicity:** About 56 percent of Hispanic workers and about 52 percent of African Americans lacked access to an employer-provided retirement plan. Minorities accounted for about 21 percent (467,000) of the roughly 2,182,000 employees without a workplace retirement plan.

Why Access to Payroll Deduction Retirement Savings Plans Is Important

- **Makes saving easier:** About 90 percent of households participating in a workplace retirement plan today report that payroll deductions are very important and make it easier to save.[1] Saving at work appears to be critical: Few households eligible to contribute to an Individual Retirement Account outside of their jobs regularly do so.[2]

AARP®
Real Possibilities
Public Policy Institute

- **Helps increase retirement income:** Social Security is essential to retirement security, but its average retirement benefit is only $1,300 a month. Most retirees will need additional resources. Providing workers with a convenient way to save is an important step to increase the amount of assets a person will have at retirement: A 2014 Employee Benefit Research Institute study found that about 62 percent of employees with access to a retirement plan had more than $25,000 in total savings and investments, and 22 percent had $100,000 or more. However, only 6 percent of those without access to such a plan had over $25,000 saved, and only 3 percent had $100,000 or more.[3]
- **Allows individuals to build their own economic security:** Retirement savings plans help workers achieve economic security through their own efforts. Greater access could also help improve economic mobility and reduce wealth disparity.

Pennsylvania: Who is NOT Covered by a Workplace Retirement Plan?
(percentage and number of private wage and salary workers ages 18–64 whose employer does not offer a retirement plan)

Item	Group	%	Number
ALL	ALL	43.8%	2,181,586
Age	18–34 years	53.1%	1,020,179
	35–44 years	40.7%	411,029
	45–54 years	36.4%	416,173
	55–64 years	36.9%	334,204
Race & Ethnicity*	Hispanic	55.6%	151,298
	Asian (non-Hispanic)	52.4%	53,699
	Black (non-Hispanic)	51.8%	231,153
	White (non-Hispanic)	41.8%	1,714,719
Education	Less than high school	65.9%	212,671
	High school	48.6%	834,307
	Some college	46.4%	638,916
	Bachelor's or higher	32.8%	495,692
Gender	Male	42.1%	1,102,529
	Female	45.8%	1,079,057
Employer Size	Under 10	76.7%	444,129
	10–49	61.2%	497,456
	50–99	50.0%	233,599
	100–499	37.5%	273,682
	500–999	33.1%	107,652
	1,000+	30.3%	625,067
Earnings Quintile	$14,000 or less	73.0%	569,724
	$14,001 to $25,000	54.6%	388,366
	$25,001 to $40,000	43.4%	305,175
	$40,001 to $63,500	31.9%	257,443
	Over $63,500	24.7%	188,727

Source: U.S. Census Bureau's Current Population Survey, March Supplements 2012–2014.

Note: The results are based on three-year averages from 2011–2013. The sample includes workers whose longest-held job was in the private sector. Earnings quintiles are based on all wages and salary earned by U.S. workers, whether or not they were covered by a retirement plan.

** Other non-Hispanic category is not shown, so sum of race & ethinicity categories may not sum to total*

1 Jack VanDerhei, "The Impact of Modifying the Exclusion of Employee Contributions for Retirement Savings Plans from Taxable Income: Results from the 2011 Retirement Confidence Survey," Employee Benefit Research Institute (EBRI) Notes, March 2011. Available at http://www.ebri.org/pdf/notespdf/EBRI_Notes_03_Mar-11.K-Taxes_Acct- HP.pdf.

2 For workers earning between $30,000 and $50,000, about 72 percent participated in an employer-provided retirement savings plan when one was available, compared with less than 5 percent without an employer plan who contributed to an Individual Retirement Account. Unpublished estimates from EBRI of the 2004 Survey of Income and Program Participation Wave 7 Topical Module (2006 data).

3 2014 RCS Fact Sheet #6," EBRI. Available at http://ebri.org/pdf/surveys/rcs/2014/RCS14.FS-6.Prep-Ret.Final.pdf.

State Fact Sheet: PA, #332, August 2015

601 E Street, NW
Washington DC 20049

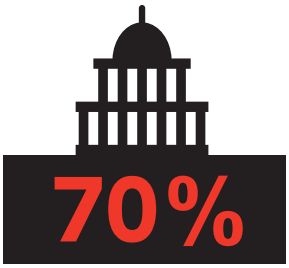
Follow us on Twitter @AARPpolicy
on facebook.com/AARPpolicy
www.aarp.org/ppi

For more reports from the Public Policy Institute, visit http://www.aarp.org/ppi/.

AARP Real Possibilities
Public Policy Institute

PENNSYLVANIA
SMALL BUSINESS OWNERS

AGREE PENNSYLVANIA SHOULD HELP WORKERS SAVE FOR FUTURE

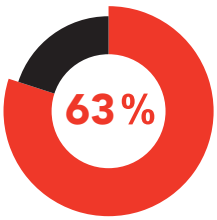


agree that the state should do more to encourage residents to save for retirement

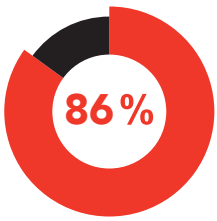
expressed concern regarding their employees having enough money saved for retirement

SUPPORT A STATE RETIREMENT SAVINGS OPTION

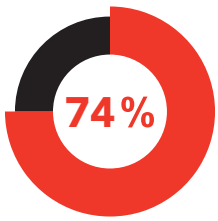
Most Pennsylvania small business owners do not offer a workplace savings option, and most of them say it's because it's too costly.



Pennsylvania small business owners do not offer a retirement savings plan because they are too costly.



agree that Pennsylvania lawmakers should support a state retirement savings option.



support legislation that would establish a privately managed, ready-to-go Pennsylvania retirement savings option.

AARP® Real Possibilities
Pennsylvania

aarp.org/PAretirementsecurity

Sauer, Jennifer. AARP 2018 Pennsylvania Small Business Owner Survey. Washington, DC: AARP Research, June 2018.
https://doi.org/10.26419/res.00227.002

July 20, 2018

Honorable Mike Sturla
Chairman
House Democratic Policy Committee
Main Capitol
Harrisburg, PA 17120

Dear Mr. Chairman:

We respectfully request that this letter be included as part of the official record of the House Democratic Policy Committee hearing on Monday, July 23.

The PA Septage Management Association (PSMA) represents firms whose business it is to install and maintain onlot septic systems. Most of our members are small independent businesses which would be governed by any legislation creating a state-run pension system.

While PSMA supports the goal of employee retirement security, there is a serious obstacle. The principal issue to our members is the compulsory nature of such a state-run small business pension program. This is a new extension of the state into business regulation where additional administrative costs are imposed on small business. Some may say that the costs are minimal but that remains to be seen. Administrative time to handle added paperwork associated with administration or with reporting to the state that someone has been hired or who has found other employment costs business money, both directly and in reduced productivity in other HR areas because of this new demand. Added compliance costs may also come in the form of additional fees charged by payroll services. After all, having a pension system – even one administered by the state, means reporting, tracking, etc. An unknown is whether U.S. Department of Labor ERISA rules apply. If so, that would be an unanticipated consequence of this mandatory pension legislation. In other words, workability research is needed.

Before this concept proceeds further, PSMA recommends that the House Democratic Policy Committee meet informally with a group of small businesses from a range of industries and payroll service firms to better learn about the administrative "back room" costs associated with an additional state requirement of mandatory employer participation. Please understand that I am not talking about the default participation of employees unless they opt out. Although important, that is a separate issue from the point PSMA is making about the unknown added costs to small businesses from this program.

Thank you for receiving this written comment.

Sincerely,

Joe Garner

Joe Garner
President, PA Septage Management Association
PO Box 144
Bethlehem, PA 18016
director@psma.net or xenobun@aol.com

TESTIMONY

PA HOUSE DEMOCRATIC POLICY COMMITTEE

SMALL BUSINESS PENSIONS

JULY 23, 2018

Wayne Campbell
President
Pennsylvania State Grange
Erford Road
Lemoyne, PA 17043
717-737-8855
president@pagrange.org

Thank you for accepting this testimony.

The Pennsylvania State Grange was formed in 1873 to advocate for rural Pennsylvanians. In addition to its agricultural origins, it also works on issues affecting rural businesses. One at the top of our list is securing universal access to Internet and cell phone service throughout the Commonwealth. Although not germane to today's topic, we hope that the House Democratic Policy Committee will consider a separate hearing on that topic as well.

Policymakers have identified a problem but not a viable solution to the established fact that many Pennsylvanians do not adequately plan for their retirement. It has been suggested that a state-run pension plan be established where employers would be required to participate and employees would be automatically enrolled unless they proactively opted out.

Although using the harmless sounding words like "voluntary individual retirement accounts", the proposal is anything but.

Small employers would be required to participate in the state pension plan unless they are big enough to have their own. What this means is that smaller employers would be required to add this mandatory program to their human resources function except…wait a minute! They do not have an HR Department because they are too small. In many businesses, the head of the company is the HR Department. While I am sure that efforts would be made to streamline and simplify compliance requirements, there are still added administrative burdens. Consider these possibilities:

- Mandatory reporting to (presumably to Department of Revenue or State Treasurer) of employees and changes to employee status
- Administrative time spent on informing employees about the state pension plan and processing enrollment and opt-outs
- Follow up administrative time at least initially with the plan overseers until the system is actually up and running

Small businesses already have their hands full doing everything a small business has to do in order to survive. An administrative mandate is a cost. If small businesses had the time and financial resources, many would already have considered some type of pension plan. There are enough insurance producers and financial advisors out there to make businesses aware of the desirability of setting up some sort of retirement savings system. Administrative costs are true costs. They either add to workloads of existing staff, including the business owner, or increase outsourcing charges from third-party payroll firms. In other words, although the retirement savings goal is commendable, that proposed solution adds administrative costs for small businesses.

Is Freedom Free Without Real Choices?

In addition to adding to small business' costs, there is another, deeper issue. There is a real need for more retirement savings but should the paternalistic hand of government force a one size fits all solution? The word 'voluntary' is used but the employee has to proactively say that he or she chooses not to be part of the state pension system. Technically, that might meet a wordsmith's definition of freedom of choice but actually, the choice is made for you by the state unless you affirmatively opt-out. Put another way, the government knows what is best for you and has already made your choice -- unless the employee opts out.

Needless to say, this may weaken private sector plan options when the state pension plan gives itself the advantage of automatic enrollment. It would hurt those agents, brokers, and advisors who try to help businesses with private sector pension options. If a small business is already forced into a state pension program, it reduces incentive to see how the employer would adopt a private sector plan.

How Will The State Pension Plan Sustain Itself?

This plan is reminiscent of an element of the Affordable Care Act that mandated an employer-based long-term care insurance program where employees would be 'in' unless they decided to opt out. That plan was never implemented – not because of Republicans in Congress who were opposed to the Affordable Care Act altogether but rather, by the Obama Administration itself, which did the numbers and found the concept to be financially unsustainable. That was an insurance program, not a pension program but there are similarities in employer participation with employee opt-out.

An employee near to retirement would be more inclined to participate and be vested so as to get that retirement income. Supposing the employee enrolls five years before retirement, assuming that is the vesting period, they could see a 20 to 30-year return on their five-year investment. This is similar to the problem in insurance called 'adverse selection' where someone takes out insurance knowing they will have claims. Put another way, this mandatory pension system creates an opportunity for workers to "game" the system until the pension plan becomes unsustainable with more pension money being paid out than is taken in.

If the proposed pension system runs into financial difficulties, will participation be mandatory as the next step? Forced placement removes a worker's right to choose.

Is the Firewall Tall Enough?

History shows that expediency is at the heart of a State Budget. In the last fiscal year, for example, there were a number of 'fixes': an attempt to take Joint Underwriting Association (JUA) insurer reserves (blocked by the courts); the equity loan on the Farm Show Complex; and the loan against future payments to PA from the Master Tobacco Settlement. This year, the fiscal doom and gloom cloud has been somewhat lifted as shown by the infusion 0of $22 million into the Rainy Day Fund but the principle of taking money from dedicated funds is still alive and well.

Put another way, should the proposed mandatory participation pension program be on shaky ground financially, there will have to be a bail-out to meet this financial obligation. From where will the money come?

We already have situations with the state's public employee systems where there are unfunded liabilities. Would a state-run pension plan suffer the same fate?

How Can A State Pension Keep Its Fiduciary Promise?

A pension plan is a promise to pay. A state pension plan is a governmental promise to pay where hopefully the monies coming in from participating employees surpass monies being paid out to state pension plan retirees. That means that taxpayers are all on the hook to keep the plan solvent if the state cannot make it self-sustaining.

If the state pension is not self-sustaining, how can it be made so? The first option was mentioned above: take the money where you find it. That is reminiscent of some House Republican who tried to dip money out of dedicated Funds such as those dedicated to conservation.

Another way for the new system to sustain itself is to cut benefits – the payout. Does anyone not think there would not be a political backlash? The third option is to grandfather existing beneficiaries (so that they do not become a politically active force) but tell new enrollees that they are getting less. A two-tier system generates arguments of unfairness between employees and even a possible disinclination of new employees to participate if the benefits are cut too far. This certainly sounds like debate about teachers' and state employees' pensions, doesn't it?

A forth option is to increase contribution to the state pension plan -- increasing the amount taken from employees' paychecks. This would discourage enrollment if the new contribution is too high. That also raises the question of an employee who is vested wanting to opt-out because of the new contribution level.

Does that mean that he or she can get their money back that they put into the pension plan if they decide to quit? It is a Catch-22. If that person is entitled to get their money back and he or she believes that the fund will soon be insolvent, will that result in a run on the bank? If the person cannot get their money back, then the state would still be left with the legal responsibility to pay even though there is no money coming in from that opted-out person.

An ultimate option is to take the word 'voluntary' out of the equation and force people to enroll in the state-run pension plan and not let them out. And that is the end of the slippery slope. A forced choice is no choice at all.

Conclusion

The Pennsylvania State Grange agrees with the goal but not with this particular approach. Workability issues and philosophic concerns would prevent this from working.

An alternative is for Pennsylvania State Government to devote more resources to educate citizens about the need to prepare for their own financial self-sufficiency after retirement and to educate them as to the private sector options that might be available to them. Governor Rendell tried to do something along those lines. Unfortunately, it was discontinued.

Legislation could also be passed providing incentives for small businesses to establish their own plans. Industries or associations could also be encouraged to establish retirement plans for their individuals or member companies. If the plans are well-managed and thought through with a large enough economy of scale similar to school districts banding together in consortia to reduce health insurance costs, these 'pooled' retirement plans could also help.

But, setting up a government-run pension system may receive media attention now because it sounds simple. We believe that it would be anything but.

House Co-Sponsorship Memoranda

House of Representatives
Session of 2017 - 2018 Regular Session

MEMORANDUM

Posted: January 23, 2017 05:04 PM
From: Representative Michael K. Hanna
To: All House members
Subject: Keystone Retirement Security Program (Former HB2396)

Members,

The lack of retirement savings is a growing concern for too many Pennsylvanians. We plan to reintroduce legislation designed to provide a simple way for Pennsylvanians who do not have access to an employer-supported retirement plan, to put money aside for retirement through automatic payroll deductions. Studies and experience in other states clearly show the effectiveness of such programs in prompting more people to save for their own retirements. One recent study calculated that the retirement savings under this type of program would result in an extra $3,000-$6,000 each year, for lower and middle-income employees at retirement.

The proposed Keystone Retirement Security Program of individual, low-cost, fully portable, Roth IRA accounts (with no additional administrative burdens on employers or employees), would be managed by the state Treasury and give working Pennsylvanians more financial security in the years ahead.

Employers (with five or more employees) that do not already offer a retirement plan, such as a standard pension or a 401(k), would be required to offer their employees enrollment in the Keystone Retirement Security Program. Workers could decline the structured savings plan if they choose, otherwise a small personally designated portion of their pay will be automatically deposited into an account that Treasury will manage for the employee. As we've seen in the 529 college savings plan, Treasury can capably manage these accounts at a low cost through economies of scale.

In accordance with recently issued federal guidance intended to facilitate implementation of these programs in a growing number of states, no employer contributions will be permitted to an employee's account. The Keystone Retirement Security Program would be a default option for employers that do not offer workers a tax-qualified retirement plan. Since automatic deductions from employee paychecks already exist in other accounting systems, the administrative burden on employers is negligible.

Please join me in co-sponsoring this important piece of legislation to increase the retirement security of current and future workers. Together, we can help individuals close to their golden years or those who have decades to go before retiring, benefit from retirement security.

If you have any questions, please contact Eric Mock at 717-772-2283 or by e-mail at EMock@pahouse.net.

Introduced as HB465

PRINTER'S NO. 486

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 465 Session of 2017

INTRODUCED BY HANNA, DRISCOLL, MARKOSEK, LONGIETTI, CALTAGIRONE, GOODMAN, YOUNGBLOOD, STURLA, McNEILL, SCHLOSSBERG, DERMODY, DAVIS, McCARTER, WARREN, KORTZ, FRANKEL, SOLOMON, GALLOWAY, FREEMAN, COMITTA, KAVULICH, SCHWEYER, READSHAW AND DEAN, FEBRUARY 13, 2017

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 13, 2017

AN ACT

Establishing the Keystone Retirement Savings Program, the Keystone Retirement Savings Program Fund and the Keystone Retirement Savings Program Administrative Fund; providing for powers and duties of the Treasury Department and the Department of Revenue; and imposing civil penalties.

TABLE OF CONTENTS

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Keystone Retirement Savings Program Act.

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative fund." The Keystone Retirement Savings Program Administrative Fund established under section 303.

"Department." The Treasury Department of the Commonwealth.

"Eligible employee." A person who is 18 years of age or older and employed by an eligible employer. The term includes an employee of a small employer that opts to provide payroll deposit retirement savings arrangements for its employees.

"Eligible employer." An entity engaged in a business, industry, profession, trade or other enterprise in this Commonwealth, whether for profit or not for profit, that satisfies the following conditions:

(1) Employs at least five employees.

(2) Has been in business at least one full calendar year.

(3) Has not offered a qualified retirement plan, including, without limitation, a plan qualified under any of the following provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) in the preceding calendar year:

(i) Section 401(a) or (k) (26 U.S.C. § 401(a) or (k)).

(ii) Section 403(a) or (b) (26 U.S.C. § 403(a) or (b)).

(iii) Section 408(k) or (p) (26 U.S.C. § 408(k) or (p)).

(iv) Section 457(b) (26 U.S.C. § 457(b)).

"Enrollee." An eligible employee who is enrolled in the program.

"Fund." The Keystone Retirement Savings Program Fund established in section 302.

"IRA." A Roth individual retirement account under section 408A of the Internal Revenue Code of 1986 (26 U.S.C. § 408A).

"Participating employer." An eligible employer or small

employer that provides a payroll deposit retirement savings arrangement for its employees who are enrollees in the program.

"Payroll deposit retirement savings arrangement." An arrangement by which a participating employer allows enrollees to remit payroll deduction contributions to the program.

"Program." The Keystone Retirement Savings Program established in section 301.

"Small employer." An entity engaged in a business, industry, profession, trade or other enterprise in this Commonwealth, whether for profit or not for profit, that:

(1) employs less than five employees; or

(2) has been in business less than one full calendar year and notifies the department of the employer's interest in being a participating employer.

CHAPTER 3

KEYSTONE RETIREMENT SAVINGS PROGRAM

Section 301. Establishment of program.

A retirement savings program in the form of an automatic enrollment payroll deduction IRA, known as the Keystone Retirement Savings Program, is established. The program shall be administered by the department for the purpose of promoting greater retirement savings for eligible employees in a convenient, low-cost and portable manner.

Section 302. Keystone Retirement Savings Program Fund.

(a) Establishment.--The Keystone Retirement Savings Program Fund is established as a special fund in the State Treasury. The fund is declared to be a spendthrift trust, and construction of an enrollee's program account as self-settled shall not cause the program account to be treated as other than a spendthrift trust. The fund shall include the individual retirement accounts

of enrollees, which shall be accounted for as individual accounts. Money in the fund shall consist of money received from enrollees through participating employers.

(b) Amounts on deposit.--The amounts deposited in the fund shall not constitute property of the Commonwealth, and the fund shall not be construed to be an agency or instrumentality of the Commonwealth. Amounts on deposit in the fund shall not be commingled with Commonwealth funds, and the Commonwealth shall have no claim to or against, or interest in, the funds.

Section 303. Keystone Retirement Savings Program Administrative Fund.

The Keystone Retirement Savings Program Administrative Fund is established as a separate trust fund in State Treasury. The department shall use money in the administrative fund to pay for start-up and ongoing administrative expenses incurred in performing the duties of the department or the Department of Revenue under this act. The administrative fund may receive money designated for administrative purposes from the Commonwealth or a unit of Federal or local government or any other person, firm, partnership or corporation. Interest earnings that are attributable to money in the administrative fund shall be deposited into the administrative fund.

Section 304. Program administration.

(a) Duty of department.--Subject to the provisions of this act, the department shall implement and administer the program in a manner as the department determines, provided that the fund is operated such that the accounts of enrollees meet the requirements for an IRA under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(b) Operating and administrative costs.--The department

shall, through the Governor, annually submit to the General Assembly a budget covering the operating and administrative expenses of the program. Upon approval by the General Assembly in an appropriation bill, expenses as incurred by the program, commencing one year after the department begins accepting enrollees into the program, shall be paid from the fees, charges and investment earnings of the fund or from other available funds.

(c) Repayment of initial appropriation.--The department shall repay to the General Fund money appropriated for the initial planning, organization and administration of the fund. The repayment shall be made from the fees, charges and investment earnings of the fund within 10 years of the effective date of this section.

Section 305. Fiduciary duty.

The department, employees of the department and agents of and investment managers retained by the department shall stand in a fiduciary relationship to and shall discharge their duties with respect to the program solely in the interest of the program's enrollees and beneficiaries:

(1) for the exclusive purposes of providing benefits to enrollees and beneficiaries and defraying reasonable expenses of administering the program; and

(2) by exercising that degree of judgment, skill and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence, who are familiar with the matters, exercise in the management of their own affairs not in regard to speculation, but in regard to the permanent disposition of the funds, considering the probable safety of their capital.

Section 306. Powers and duties of department.

The department shall have the power and duty:

(1) To cause the program to be designed, established and operated in a manner that:

(i) Complies with all applicable sections of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(ii) Accords with best practices for retirement savings vehicles.

(iii) Maximizes participation, savings and sound investment practices.

(iv) Maximizes ease of administration for participating employers and enrollees.

(v) Provides an efficient product to enrollees by pooling investment funds.

(vi) Ensures the portability of benefits.

(vii) Distributes enrollee assets to maximize financial security in retirement.

(2) To make and enter into contracts necessary for the administration of the program and fund, including, but not limited to, retaining and contracting with investment managers, private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators and other professionals as necessary.

(3) To conduct a performance review of each investment manager no less than once every three years, which shall include without limitation a review of returns, fees and customer service. A copy of each performance review shall be posted on the department's publicly accessible Internet

website.

(4) To design and establish the process for enrollment, including the process by which an eligible employee can opt not to participate in the program, select a contribution level, select an investment option and terminate participation in the program.

(5) To allocate administrative costs to individual retirement accounts in the fund on a pro rata basis. Annual administrative costs of the department shall not exceed 0.1% of the total fund balance.

(6) To facilitate education and outreach to employers and employees.

(7) To facilitate compliance by the program with all applicable requirements for the program under the Internal Revenue Code of 1986, including tax qualification requirements or other applicable law and accounting requirements.

(8) To carry out the duties and obligations of the program in an effective, efficient and low-cost manner.

(9) To exercise any other powers reasonably necessary for the effectuation of the purposes, objectives and provisions of this act pertaining to the program.

Section 307. Risk management.

The department shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the program and fund portfolio, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall

risk management and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards.

Section 308. Investment managers.

(a) Engagement.--The department shall have sole and exclusive discretion to engage investment managers.

(b) Fees and charges.--An investment manager's fees and charges shall not exceed 0.5% of fund assets under management.

(c) Duty of compliance.--An investment manager shall comply with applicable Federal and State laws and regulations, as well as rules, policies and guidelines promulgated by the department with respect to the program and the investment of the fund, including, but not limited to, the investment policy.

(d) Oversight.--An investment manager shall provide reports to and appear before department personnel as the department deems necessary or desirable for the department to oversee each investment manager's performance and the performance of the fund.

Section 309. Investment options.

(a) General rule.--The department shall establish the following investment options:

(1) A life-cycle fund with a target date based upon the age of the enrollee.

(2) An equity index fund.

(3) A bond index fund.

(4) Other investment options as the department deems necessary or desirable.

(b) Default investment option.--The department shall select, and may change from time to time at the department's discretion, the default investment option for enrollees who do not elect an

investment option.

Section 310. Benefits.

Interest, investment earnings and investment losses shall be allocated to individual program accounts for each enrollee as established by the department. An enrollee's retirement savings benefit under the program shall be an amount equal to the balance in the enrollee's program account on the date the retirement savings benefit becomes payable. The Commonwealth shall have no liability for the payment of a benefit to an enrollee or beneficiary in the program.

Section 311. Program enrollment and participation.

Except as otherwise provided in this act, the program shall be implemented and enrollment of eligible employees shall begin no later than 24 months after the effective date of this section. The following apply after the department opens the program for enrollment:

(1) Each eligible employer shall establish a payroll deposit retirement savings arrangement to allow each eligible employee to participate in the program no later than nine months after the department opens the program for enrollment.

(2) Within 15 days following completion of the requirement in paragraph (1), an eligible employer shall automatically enroll in the program each eligible employee who has not opted out of participation in the program and shall provide payroll deposit retirement savings arrangements for those employees and deposit, on behalf of those employees, funds into the program. A small employer may, but is not required to, provide payroll deposit retirement savings arrangements for each eligible employee who elects to participate in the program.

(3) An enrollee has the ability to select or change the enrollee's contribution level, subject to rules of the department. If an enrollee fails to select a contribution level, then the default contribution level shall be 3%, or another percentage as the department may determine, of the employee's wages up to the annual limits permitted by the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(4) An enrollee may select an investment option from the investment options offered by the department. An enrollee may change the investment option at any time, subject to rules of the department. In the event that an enrollee fails to select an investment option, the enrollee shall be placed in the default investment option selected by the department.

(5) Following initial implementation of the program under this section, at least once every year, participating employers shall designate an open enrollment period of not less than 15 days during which eligible employees who previously opted out of the program may enroll in the program or, if permitted by the participating employer, may enroll prior to the open enrollment period.

(6) An employer shall retain the option at all times to set an employer-sponsored retirement plan, such as a defined benefit plan, 401(k) plan, Simplified Employee Pension (SEP) plan or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the program. An employer-sponsored retirement plan must permit rollover of an employee's program account into the plan.

(7) An employee may terminate participation in the program at any time in a manner prescribed by the department.

Section 312. Payments.

Employee contributions deducted by a participating employer through payroll deduction shall be paid by the participating employer to the fund using one or more payroll deposit retirement savings arrangements established by the department, in cooperation and coordination with the Department of Revenue, either:

(1) on or before the last day of the month following the month in which the compensation otherwise would have been payable to the employee in cash; or

(2) before a later deadline prescribed by the department for making payments, but not later than the due date for the deposit of tax required to be deducted and withheld relating to collection of income tax at source on wages or for the deposit of tax required to be paid under the unemployment insurance system for the payroll period to which the payments relate.

Section 313. Duty and liability of Commonwealth.

(a) Payments.--The Commonwealth shall have no duty or liability to a party for the payment of retirement savings benefits accrued by an individual under the program. Financial liability for the payment of retirement savings benefits in excess of funds available under the program shall be borne solely by the entities that the department contracts with to provide insurance to protect the value of the program.

(b) Liability.--No Commonwealth board, commission or agency, or an officer, employee or member thereof, is liable for loss or deficiency resulting from particular investments selected under

this act, except for a liability that arises out of a breach of fiduciary duty under this act.

Section 314. Duty and liability of participating employers.

(a) Liability.--Participating employers shall not be liable for an employee's decision to participate in or opt out of the program, or for the investment decisions of the department or of an enrollee.

(b) Fiduciary and other responsibility.--A participating employer shall not:

(1) Be a fiduciary, or considered to be a fiduciary, with respect to the program.

(2) Bear responsibility for the administration, investment or investment performance of the program.

(3) Be liable with regard to investment returns, program design and benefits paid to enrollees.

Section 315. Audit and reports.

(a) Reports to Governor and General Assembly.--The department shall annually submit the following to the Governor and the General Assembly:

(1) An audited financial report, prepared by the Auditor General in accordance with generally accepted accounting principles, of the program for each calendar year by July 1 of the next following year.

(2) A report prepared by the department, which shall include, but is not limited to, the following:

(i) A summary of the benefits provided by the program, including the number of enrollees in the program.

(ii) The percentage and amounts of investment options and rates of return, net of fees.

(iii) Other information that is relevant to make a full, fair and effective disclosure of the operations of the program and the fund.

(b) Reports to employers and enrollees.--In addition to other statements or reports required by law, the department shall provide periodic reports at least annually as follows:

(1) To participating employers, a report of the names of each enrollee employed by the participating employer and the amounts of contributions made by the participating employer on behalf of each employee during the reporting period.

(2) To enrollees, a report of contributions and investment income allocated, to withdrawals from and balances in the enrollees' accounts for the reporting period.

(c) Additional information.--The department may include in a report under subsection (b) any other information regarding the program as the department may determine.

CHAPTER 5

ENFORCEMENT

Section 501. Civil penalties.

(a) Fines for failure to enroll.--An eligible employer who fails without reasonable cause to timely enroll an eligible employee in the program shall be subject to the following fines:

(1) Seventy-five dollars for each employee for the first calendar year or portion of the first calendar year during which the employee neither was enrolled in the program nor had elected out of participation in the program.

(2) Two hundred dollars for each employee for the second calendar year or portion of the second calendar year during which the employee continues to be not enrolled without electing out of participation in the program.

(3) Three hundred fifty dollars for each employee for the third calendar year and each subsequent calendar year, or portion of the third or subsequent calendar year, during which the employee continues to be not enrolled without electing out of participation in the program.

(b) Fines for failure to remit.--An eligible employer shall be subject to a fine of $25 for each failure to timely remit a payroll deduction contribution to the program of an enrollee. Nothing within this subsection shall be construed or interpreted as altering any rights or remedies at law or in equity of an enrollee against the enrollee's employer for failing to timely remit the enrollee's contributions to the program.

(c) Notice and assessment.--

(1) After determining that an employer is subject to penalty under this section for a calendar year, the Department of Revenue shall issue a notice of proposed assessment to the employer. Upon the expiration of 90 days after the date on which a notice of proposed assessment is issued, the penalties specified in the notice shall be deemed assessed, unless the employer files a protest with the department.

(2) If, within 90 days after the date on which it was issued, a protest of a notice of proposed assessment is filed under subsection (d), the penalties specified in the notice shall be deemed assessed upon the date when the decision of the Department of Revenue with respect to the protest becomes final.

(d) Protest and hearing.--A written protest against the proposed assessment shall be filed with the Department of Revenue in the form prescribed by the Department of Revenue,

setting forth the grounds on which the protest is based. If the protest is filed within 90 days after the date the notice of proposed assessment is issued, the Department of Revenue shall reconsider the proposed assessment and shall grant the employer a hearing. As soon as practicable after the reconsideration and hearing, the Department of Revenue shall issue a notice of decision to the employer, setting forth the Department of Revenue's findings of fact and the basis of decision, which decision shall be final.

(e) Notice to demand payment.--As soon as practicable after the penalties specified in a notice of proposed assessment are deemed assessed, the Department of Revenue shall give notice to the employer liable for an unpaid portion of the assessment, stating the amount due and demanding payment. If an employer neglects or refuses to pay the entire liability shown on the notice and demand within 10 days after the notice and demand is issued, the unpaid amount of the liability shall be a lien in favor of the Commonwealth upon all property and rights to property, whether real or personal, belonging to the employer, and the provisions of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, regarding liens, levies and collection actions with regard to assessed and unpaid liabilities under The Fiscal Code, including the periods for taking an action, shall apply.

(f) Mailing of notice.--Whenever notice is required under this section, the notice may be issued by mailing it by first class mail addressed to the person concerned at the last known address of the person.

(g) Right of inspection.--All books and records and other papers and documents relevant to the determination of a penalty

due under this section shall, during business hours, be subject to inspection by the Department of Revenue or the Department of Revenue's duly authorized agents and employees.

(h) Tax forms.--The Department of Revenue may require employers to report information relevant to compliance with this act on returns otherwise due from the employers under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. Failure to provide the requested information on a return shall cause the return to be deemed not accepted.

(i) Tax liability.--For purposes of a provision of law allowing the Department of Revenue or another agency of this Commonwealth to offset an amount owed to a taxpayer against a tax liability of that taxpayer or allowing the Department of Revenue to offset an overpayment of tax against a liability owed to the Commonwealth, a penalty assessed under this section shall be deemed to be a tax liability of the employer and a refund due to an employer shall be deemed to be an overpayment of tax of the employer.

(j) Confidential information.--Except as provided under this subsection, all information received by the Department of Revenue from returns filed by an employer or from an investigation conducted under the provisions of this act shall be confidential, except for official purposes within the Department of Revenue or pursuant to official procedures for collection of penalties assessed under this act. Nothing contained under this subsection shall prevent the Department of Revenue from publishing or making available to the public reasonable statistics concerning the operation of this act wherein the contents of returns are grouped into aggregates in such a way that the specific information of an employer shall

not be disclosed. Nothing contained under this subsection shall prevent the Department of Revenue or the department from divulging information to an authorized representative of the employer or to a person pursuant to a request or authorization made by the employer or by an authorized representative of the employer.

Section 502. Disposition of fines collected.

Civil penalties collected under this act shall be deposited into the administrative fund and used by the department to cover or defray expenses of the department or the Department of Revenue incurs in the performance of its duties under this act.

CHAPTER 21

MISCELLANEOUS PROVISIONS

Section 2101. Regulations.

The department and the Department of Revenue shall promulgate regulations and adopt policies or guidelines that may be necessary or desirable to implement this act. The Department of Revenue shall coordinate and cooperate with the department as necessary to implement this act.

Section 2102. Federal considerations.

The department shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93-406, 88 Stat. 829) regarding the applicability of ERISA to the program. The department may not implement the program if the IRA arrangements offered under the program fail to qualify for the favorable Federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or if it is determined that the program is an employee benefit plan and State or employer liability is

established under ERISA.

Section 2103. Notice of program implementation.

(a) Publication in Pennsylvania Bulletin.--Upon the implementation of the program in accordance with section 311, the department shall publish notice in the Pennsylvania Bulletin advising of the date of implementation of the program.

(b) Internet posting.--The department shall post notice of the date of implementation of the program on the department's publicly accessible Internet website. The notice shall include a statement that in lieu of enrolling employees in the program employers may sponsor an alternative arrangement, including, but not limited to, a defined benefit plan, 401(k) plan, SEP plan, SIMPLE plan or automatic payroll deduction IRA offered through a private provider.

Section 2104. Effective date.

This act shall take effect as follows:

(1) Section 501 shall take effect nine months after the department publishes the notice required under section 2103.

(2) The remainder of this act shall take effect immediately.