NEW AMERICA

ASSET BUILDING

APRIL 2015

RETIREMENT SECURITY FEDERALISM IN ACTION:
AN ANALYSIS OF THE ILLINOIS SECURE CHOICE SAVINGS PROGRAM

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INTRODUCTION

The decades-long shift away from pensions and toward individual savings accounts has become a systemic source of financial insecurity for millions of American families. Although the widespread lack of sufficient retirement savings is generally recognized to be a serious public policy problem, a federal policy solution has not materialized in recent years. In the absence of congressional action, states are beginning to step into the breach. By crafting their own set of policies to support long-term savings objectives, states are launching a new era of retirement security federalism. This trend has the potential to significantly transform the country's savings policy landscape.

The key challenge to address is encapsulated in a simple data point: Only about half of American households own a retirement account.[1] While most people that have such accounts have opened them through their employer, just above half (55 percent) of private-sector American workers have access to a retirement plan at work, leaving 43 million workers outside of the retirement savings system.[2] The failure to reach these households has undermined the defined contribution model, which depends on employers' willingness to provide access to retirement savings vehicles. Unfortunately, the proportion of workers covered by a workplace retirement plan of any kind has not budged since the 401(k)'s introduction in the early 1980s. While the percentage of workers participating in 401(k) plans has increased over time in relation to those participating in defined-benefit plans, the overall percentage of workers having access to any retirement plan at work has remained at about 50 percent since the 1980s.[3]

Policy efforts at the federal level to address this lack of access have included both legislative proposals and executive actions. A range of options has been presented in Congress during this time, spanning the distance from

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[1] Jesse Bricker et al., (2014), "Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances," Board of Governors of the Federal Reserve System.

[2] Nari Rhee and Ilana Boivie, (2015), "The Continuing Retirement Savings Crisis," National institute on Retirement Security. The estimate of the share of workers who have access to an account comes from analysis of the Census Bureau's Current Population Survey.

[3] For current statistics, see Craig Copeland, (2014), "Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013," EBRI Issue Brief no. 405, Washington, D.C.: Employee Benefit Research Institute. For historical statistics, see Sarah Holden, Peter Brady, and Michael Hadley, (2006), "401(k) Plans: A 25-Year Retrospective," ICI Research Perspective Vol. 12, No. 2, Washington, D.C.: Investment Company Institute, and the associated appendix.

a system of universally and automatically provided accounts that would essentially replace the 401(k) system to proposals to simply remove barriers for small businesses to offer low-cost retirement plan options.[4] One particularly promising proposal, called the Automatic Individual Retirement Account or Auto IRA, would create a universal retirement savings plan accessible to every worker, even to those whose employers do not offer their own plans.[5] Based on insights from behavioral economics that show the advantages of automatic enrollment, this policy would effectively ensure that nearly everyone in the workforce was connected to a savings platform, with the ability to opt-out if they decided against making contributions. In his 2014 State of the Union address, President Obama announced an important executive action to promote retirement savings, the "My Retirement Account" or myRA program, which is currently being implemented by the Department of the Treasury. MyRA would offer a safe, low-cost, payroll-deposit Roth IRA option to employees without access to a retirement plan at participating employers, and has the potential to be offered more broadly to all American workers in the future.[6]

But because these federal efforts have been either slow to materialize or minimal in impact, states have looked for options to increase retirement account access on their own. Perhaps the most important recent state interventions to solve the problem of access to retirement plans have been variations on universal retirement-account systems, which would be overseen at the state level. California became the first state to legislatively advance such a proposal, called Secure Choice, when its legislature authorized a feasibility study of the program in 2012.[7] The study is still ongoing as of early 2015. Over the past two years, a number of other states have begun to consider developing their own Secure Choice legislation.[8] For example, Connecticut is currently conducting a feasibility study on implementing Secure Choice.[9] In 2014, the Oregon Retirement Savings Task Force submitted a recommendation for the state to implement a program similar to Secure Choice.[10]

Illinois, however, is currently the state furthest along in the process of fully implementing a system of nearly universal and automatic retirement accounts for private-sector workers. In December 2014, the legislature passed the Illinois Secure Choice Savings Program Act. Governor Pat Quinn signed the bill into law in January 2015.

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[4] A proposal to make it easier for small employers to join multiple employer plans (MEPs) was offered in the Retirement Security Act of 2014 (S. 1970) by Senators Susan Collins (R-ME) and Bill Nelson (D-FL) in the 113th Congress.

[5] Versions of this plan were introduced in the 113th Congress by Representative Richard E. Neal (MA-1) as the Automatic IRA Act of 2013 (H.R. 2035) and by Senator Tom Harkin (D-IA) as the USA Retirement Funds Act of 2014 (S. 1979).

[6] For details, see Reid Cramer, Justin King, Elliot Schreur, and Aleta Sprague, (2014), "Solving the Retirement Puzzle: The Potential of myRAs to Build a Personal Safety Net," Washington, D.C.: New America.

[7] This authorization was made in SB 1234 and amended by SB 923 in the 2011-2012 session of the California Legislature. For background and analysis on this effort, see Aleta Sprague, (2013), "The California Secure Choice Retirement Savings Program: An Innovative Response to the Coming Retirement Security Crisis," Washington, D.C.: New America.

[8] According to the Pension Rights Center, as of August 2014 the states that have at least started the process of studying programs similar to Secure Choice are Arizona, Colorado, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Ohio, Oregon, Vermont, Washington, West Virginia, and Wisconsin. "State-based retirement plans for the private sector," (2014), Fact Sheet, Washington, D.C.: Pension Rights Center. In addition to these states, a Secure Choice proposal was recently introduced in New Jersey.

[9] "Connecticut Secure Retirement Plan," (2014), Washington, D.C.: Pension Rights Center.

[10] "Report and Recommendations of the Oregon Retirement Savings Task Force," (2014), Report Created and Tasked Pursuant to HB 3436 (2013), Oregon Retirement Savings Task Force, September 15, 2014.

Introduced by State Senator Daniel Biss, Illinois Secure Choice is designed to create access to long-term savings plans for up to 2.3 million Illinois workers.[11]

In many respects, the Illinois program is similar to the program envisioned in the 2012 California law, though there are some significant differences.[12] The Illinois plan will offer accounts structured as Roth IRAs (after-tax contributions and tax-free earnings) as opposed to the California plan, which will use a traditional IRA structure.[13] This choice of the Roth structure has the potential to significantly broaden the appeal of the program for reasons to be discussed below.[14]

[11] "Americans Without a Retirement Plan, by State," (2014), AARP, July 14, 2014.

[12] A comparison between the Secure Choice programs envisioned in California and Illinois is given in table form in figure 1.

[13] California Senate Bill 1234 (session 2011-2012), Section 100000(e) specifies that the IRA arrangements contemplated by the bill are traditional IRAs established under Section 408 of U.S. Code Title 26. Roth IRAs are codified under section 408A.

[14] The proposal to amend the legislation to provide for a Roth structure was introduced during the legislative process by the long-time Illinois House Majority Leader and Rules Committee Chairperson Barbara Flynn Currie.

COMPARING CALIFORNIA AND ILLINOIS SECURE CHOICE SAVINGS PROGRAMS

	Illinois Secure Choice Savings Program	California Secure Choice Savings Program
Lead Sponsor(s)	Sen. Daniel Biss	Sen. Kevin de Leon, Sen. Darrell Steinberg
Bill Number	SB 2759; Public Act 098-1150	SB 1234 and amended by SB 923
Date of enactment	January 4, 2015	September 28, 2012
	Areas of Overlap	
Automatic Enrollment	All qualifying employers that do not sponsor a retirement plan are required to enroll their employees in the program. Employees may opt out at any time.	
Contribution Limit	Same as the annual IRA contribution limit: currently $5,500.	
Default Contribution Rate	3% (changing this default in Illinois requires legislature action; in California, the board may unilaterally decide to alter this rate between 2 and 4%).	
Employer Match	Not permitted.	
	Areas of Contrast	
Status	Implementation underway.	Subject to feasibility study and legislative action.
Employers Affected by Mandate	Employers with more than 25 employees; in business more than 2 years; and have not offered a retirement plan in the last 2 years.	Employers with more than 5 employees; private industry (for-profit or non-profit).
Availability to Other Employers	Other employers, including small employers with less than 25 employees and those in business less than 2 years, may choose to participate in the program, but are not required to do so.	Subject to board approval, employees of non-participating employers and the self-employed may be allowed to contribute.
Availability to Other Individuals	The board may set up a mechanism for self-employed individuals or those at non-participating employers to contribute.	Same as Illinois.
Employee eligibility	Workers must be at least 18 years old and must have income that is subject to Illinois income tax. Employees can opt out of the program, and then will be allowed to reenter the program during certain open enrollment periods.	All employees at participating employers. Employees may opt out at any time and may reenroll at designated open-enrollment periods.
Structure of Accounts	Roth IRA.	Traditional IRA.
Withdrawal Rules	Contributions can be withdrawn at any time for any purpose. Earnings are subject to IRA rules and are therefore subject to taxes and penalties for non-retirement uses.	All funds in the account are subject to IRA rules and are therefore subject to taxes and penalties for non-retirement uses.
Investment Options	5 options: a life-cycle, target-date fund; a conservative option; a growth option; an annuity option; and a secure, insured option.	There are no investment options. Funds will be contributed to a central, pooled fund offering a safe, conservative portfolio with a guaranteed rate of return.
Default Investment Option	Life-cycle, target-date fund, though the board may elect to choose the secure, insured option as the default.	Contributions are invested in the pooled fund.
Fees	Not to exceed 0.75%.	Not specified.

Figure 1. A comparison between the state-level programs to promote retirement plan access that are closest to implementation: the Illinois Secure Choice Savings Program and the California Secure Choice Retirement Savings Program.

THE ILLINOIS SECURE CHOICE SAVINGS PROGRAM

This paper will provide a detailed summary of the Illinois Secure Choice Savings Program policy and assess its potential to serve those without employer-sponsored retirement accounts in Illinois, and to serve as a model for other states. The paper is divided into two broad sections. The first will provide a summary of the authorizing legislation for the Illinois Secure Choice program and an overview of the implementation process. The second will offer opportunities for improving the program, both at the administrative level and through future legislation. This section will also offer a discussion of structural and legal issues that may arise in the design and implementation phases of the program.

LEGISLATIVE HISTORY

Senator Daniel Biss introduced the Illinois Secure Choice Savings Program Act on January 28, 2014.[15] After a series of amendments, the bill passed the Senate and was sent to the House on April 9, 2014. Under the leadership of the bill's sponsor in the House, Majority Leader Barbara Flynn Currie, the bill was further amended and ultimately passed the House on December 2, 2014. The Senate having affirmed the House amendments, the bill passed the Illinois General Assembly on December 3, 2014. Governor Pat Quinn signed the bill into law on January 5, 2015 and set June 1, 2015 as the effective date.

IMPLEMENTATION

The bill establishes the Illinois Secure Choice Savings Board with a broad mandate to establish the rules and procedures that will govern the Illinois Secure Choice Savings Program.[16] Board members will be in place by June 1, 2015. The seven members of the board will include three executive-branch officials and four gubernatorial appointees who will represent the interests of employers and employees. The three executive branch officials on the board will be the State Treasurer, the State Comptroller, and the Director of the Governor's Office of Management and Budget. The four members appointed by the governor will be "two public representatives with expertise in retirement savings plan administration or investment," "a representative of participating employers," and "a representative of enrollees."

Once the board begins work in June 2015, it will have a maximum of 24 months to design and implement the program.[17] Elements that the board will have to consider include identifying an investment manager, filling staff positions to handle the day-to-day administration of the program, and crafting outreach and education materials to alert employers and employees of the new program. By June 1, 2017 at the latest, this process will be completed. Once the program is open for enrollment by or before June 2017, employers will have 9 months to comply with the automatic enrollment requirements explained below.[18] Ultimately, this means that the vast majority of

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[15] The bill was introduced as SB 2758 in the 98th Illinois General Assembly, which met from 2013-2014. After passage, the bill became Illinois Public Act 098-1150.

[16] Illinois Public Act 098-1150, Section 20. Hereinafter all references to section numbers unless otherwise noted refer to Public Act 098-1150, also known as SB 2758 in the 98th Illinois General Assembly, 2013-2014.

[17] Sec. 60.

[18] Sec. 85(o).

workers in the state of Illinois will either be participating in—or have access to—a workplace retirement savings plan by March 2018 at the latest.

WORKER ELIGIBILITY

One of the main purposes of the program is to expand worker access to a retirement savings vehicle. To this end, the program is targeted at employed individuals over the age of 18 whose employers do not already offer a retirement plan.[19] An important demographic that is left out of the automatic and employer-mandated part of the program are employees who work for small firms with fewer than 25 employees. The bill leaves open the possibility for broader eligibility among Illinois workers in the future,[20] but the main provisions of the bill are aimed at this subset of the employed individuals in the state.

AUTOMATIC ENROLLMENT

Affected employers are required to automatically enroll their workers in the program. Affected employers are those that:

- Are in private industry (whether for-profit or non-profit),
- Have 25 or more employees,
- Have been in business for at least two years, and
- Have not offered a retirement plan of any kind to their employees in the previous two years.[21]

The employers falling into this category are required to make arrangements to include their employees in the program by distributing state-provided informational materials, facilitating payroll deposits, automatically enrolling employees, and providing annual open-enrollment periods to allow employees to enroll or reenroll in the program. These duties are the only responsibilities of the employers. The law envisions no fiduciary duty or other liability for employers in connection with the program.[22]

CONTRIBUTION STRUCTURE

The default contribution rate for employees who are automatically enrolled is 3 percent of wages.[23] Contributions will be taken out of wages every pay period. Employees may choose to select a contribution rate other than 3 percent, or to designate a specific dollar amount to contribute every pay period. The only limitation on contributions is that the aggregate annual total contributions for an individual may not exceed the legal limit for contributions to a Roth IRA. For 2015 for most workers, that limit is $5,500 a year, or about $211 per biweekly paycheck.

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[19] Sec. 5.

[20] Small employers may voluntarily participate: Sec. 60(b); the board will "evaluate and establish the process by which an individual may voluntarily enroll in and make contributions to the Program": Sec. 30(j).

[21] Sec. 5.

[22] Sec. 75.

[23] Sec. 60(c).

FLEXIBILITY OF SAVINGS

An important feature of the Illinois Secure Choice Savings Program is that the savings accounts are structured as Roth IRAs.[24] This differs from other similar programs such as the California Secure Choice Retirement Savings Program, which will offer only a traditional IRA account.[25] By investing participants' contributions in a Roth IRA, the Illinois Secure Choice program allows workers to save for both short-term and long-term needs. The reason for this is that Roth IRA contributions are made with after-tax funds, meaning that contributions may be withdrawn at any time without penalties or tax complications. Earnings on those contributions will generally be subject to taxes and penalties if those funds are used for non-retirement needs.

Allowing participants to access their contributions in a financial emergency is an important element in ensuring sustainable long-term asset accumulation, especially for low-income workers.[26] Marketing this feature of account flexibility through outreach and education efforts could have the potential to lower opt-out rates because low-wealth workers would be assured that their savings will be there for them in an emergency.[27] It could also help to achieve the program's goal of promoting retirement security by creating a cushion of emergency savings that will be available to workers if they need it, so that they can continue to sustainably save for the long-term.[28]

PORTABILITY

Since the accounts are associated with an individual worker rather than an employer (much like an IRA attained through the private market and unlike a traditional 401(k)), the accounts will follow workers even after they change jobs. One option for workers who leave a participating employer is to roll over the funds into a private-market IRA, just as they would with any other Roth IRA. One disadvantage with this approach is that the worker will no longer be eligible for automatic payroll deposits into this account.

The other option for a worker leaving a participating employer is to carry over the Secure Choice account to another participating employer and to continue automatic payroll deposits with that employer. While the authorizing legislation is silent on the specific issue of what happens to an account when a worker leaves a participating employer for a non-participating employer, the board has authority to establish rules to accommodate this situation.[29] Specifically, the board may establish a process by which individuals may participate in the program even if they do not have an employer to sponsor their participation.[30] This solution would allow

[24] Sec. 5.

[25] See figure 1 and California Senate Bill 1234 (session 2011-2012), Section 100000(e).

[26] See Alejandra Lopez-Fernandini, (2010), "Unrestricted Savings: Their Role in Household Economic Security and the Case for Policy Action," Washington, D.C.: New America.

[27] For an example of how a financial product primarily intended for retirement savings can be successfully marketed to financially vulnerable households by emphasizing flexibility, see Tatiana Brezina, Kristen Tyrrell, and Joanna Smith-Ramani, (2015), "Design Recommendations for myRA, a New Savings Product for Financially Vulnerable Americans," infographic, Boston, MA: Doorways to Dreams Fund.

[28] See Reid Cramer, Justin King, Elliot Schreur, and Aleta Sprague, (2014), "Solving the Retirement Puzzle: The Potential of myRAs to Build a Personal Safety Net," Washington, D.C.: New America.

[29] See the second section of this paper for further discussion of this problem and possible solutions.

[30] Sec. 30(j).

employees to direct their employers to split their paychecks, just as they could with any two bank accounts, and continue to deposit a portion of their wages into their Secure Choice account.

INVESTMENT CHOICES

Since workers will be automatically enrolled in the Secure Choice program, a default investment option must be designated to receive the funds of workers who take no action regarding their account. Depending on the board's decision, the default investment asset will be one of two types. The first option is a life-cycle fund and the second is a secure return fund.[31] The life-cycle fund will be invested in a mix of equities and bonds and will take into account the age of the participant in determining the risk exposure of the investment.[32] The secure return fund will be invested in low-return, safe assets and may be insured to guarantee the value of the funds.[33] The board will make a fiduciary decision as to which of these should be the default option for enrollees.

In addition to the default option, the board will work to establish three other investment options: a conservative fund, a growth fund, and an annuity fund.[34] Participants will be offered the option to select one and only one of these five funds in which to invest.[35]

FEES

The authorizing legislation sets an overall cap on the fees that may be collected on funds invested in the program at 0.75 percent.[36] The ultimate fee structure will take into account the costs of investment management as well as administrative expenses incurred by the state. Unlike some private-market products, all individual fee calculations will be made pro rata, ensuring that low-balance accounts are not charged higher proportional fees compared to high-balance accounts.[37] This pro rata fee structure is important for making the program a meaningful and viable financial tool for low- and middle-income workers.

REPORTING AND DISCLOSURE REQUIREMENTS

Before the program is implemented, affected employers will receive an information packet from the Secure Choice board explaining the requirement to enroll their employees in the program and the alternate option to establish their own retirement savings plan. This packet will also include an employee information packet.[38] The employee information packet will be distributed to each employee at the inception of the program and to new employees

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[31] Sec. 45(a), (c).

[32] Sec. 45(a).

[33] Sec. 45(b)(3).

[34] Sec. 45(b)(1), (2), (4).

[35] This view was expressed by officials familiar with the implementation of the program in private conversation, January 9, 2015.

[36] Sec. 30(m).

[37] Sec. 30(n).

[38] Sec. 55(a).

when hired. It will include information on how the program works, what the benefits of participation are, and how to opt out of the program.[39]

Every year, the board will submit a series of reports on the status and operations of the program.[40] One set of reports will be made to the state and another set of reports will be made to participating employers and employees. The reports made to the state will include an audited financial report[41] and a narrative report describing the extent of participation in the program and the status of investments.[42] The audited financial report will be formally made to the governor, the comptroller, the State treasurer, and the General Assembly. It will summarize the financial operations of the program, including costs attributable to contracts with consultants, financial firms, and other non-governmental expenses. The narrative report will include a broader set of metrics on the program including the number of enrollees, the types of investment options and their uptake by enrollees, the rates of return on investments, and other data. This report will likely be useful to researchers and policymakers who are deciding whether and how to establish similar programs in other states or nationwide.

The reports made to employees and employers will be individualized to each participating employer and enrollee. The individualized reports to employers will include information on the names of participating workers and their contribution amounts. The individualized reports to enrollees will serve as the participants' account-balance statement and will report on the contributions and withdrawals made to the account throughout the year. This report has the potential to be a powerful tool to communicate motivating messages about the importance of saving to participants and will provide an opportunity to encourage increases in contribution rates through behavioral nudges.

FUTURE DEVELOPMENTS

A number of operational decisions remain to be made by the board. Chief among these decisions is whether and how to expand participation to individuals who are not employed by a participating employer.[43] Doing so would not only be a step toward expanding access to retirement accounts; it would also solve a number of operational problems with the program. First, it would allow workers to continue to contribute to their accounts even after leaving a participating employer. Second, it would prevent a situation in which the program is forced to manage many abandoned, low-balance accounts from previously eligible participants. Third, broadening voluntary eligibility could increase participation in the program—even among employees who would already be automatically enrolled through an employer—because employees nearing a job change would have less disincentive to opt-out, knowing that they could continue to benefit from the accounts after leaving their current participating employer.

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[39] Sec. 55(c).

[40] Sec. 80.

[41] Sec. 80(a)(1).

[42] Sec. 80(a)(2).

[43] Sec. 30(j). See discussion below.

IMPLEMENTATION CHALLENGES AND OPPORTUNITIES

While the program as currently designed represents a promising start, making the right decisions concerning its implementation is necessary for ensuring that the program lives up to its potential and can serve as a preeminent model for other states. Opportunities for next steps are described below along with a short discussion of the structural and legal hurdles that still remain before complete implementation of the program.

SUMMARY OF CHALLENGES AND OPPORTUNITIES
PROPOSALS TO IMPROVE PARTICIPATION
Expand voluntary eligibility
Facilitate participation at tax time
Emphasize account flexibility in outreach and education efforts
PRODUCT IMPROVEMENTS
Implement auto-escalation nudges wherever possible
Collect meaningful data
STRUCTURAL ISSUES
Participation of ineligible individuals
Abandoned accounts
Employer contributions
LEGAL IMPEDIMENTS TO IMPLEMENTATION

PROPOSALS TO IMPROVE PARTICIPATION

EXPAND VOLUNTARY ELIGIBILITY

Among the most important decisions the board will make in the process of implementation is how the program will handle accounts not associated with a specific employer. There are at least two ways for accounts to become decoupled from participating employers under the current rules.

The first—and likely to become the most common—way this will occur is during job changes. The authorizing legislation is silent on what will happen to an account when a participating employee chooses to seek employment with a different employer when the new employer does not participate in Secure Choice. Will the account simply become frozen at its current balance, not permitting any additional contributions? Will the employee be forced to roll the account balance over into a potentially high-fee private-market IRA, or to distribute the sum as cash?

While answers are not explicitly given in the legislation, recommendations for resolving these issues will be offered below.

The second way under existing rules that an account may become decoupled from an employer involves the elective choice of the employer. A participating employer may eventually choose to end participation in the Secure Choice program. Other than simply refusing to comply with the legal requirement to participate (and subsequently paying the related fine),[44] there are two legal ways a participating employer may end participation in the program after first having participated. The first is for a participating employer to later decide to offer a private-market retirement plan to its employees. Doing so, even if the plan does not provide for automatic enrollment of employees, will exempt an employer from the requirement to participate in Secure Choice. The second way an employer may legally end participation in Secure Choice is for the employer to subsequently employ less than 25 employees. Employers with less than 25 employees may voluntarily choose to participate, but after electing to participate, they are free to subsequently choose to stop participating. Employers with more than 25 employees are required to participate, but if they subsequently employ less than 25 employees after job cuts, they will fall below the threshold for required participation in the program, converting their relationship with Secure Choice into a voluntary one. The question of what happens to an employee's Secure Choice account specifically when her employer ceases participation in the program is unanswered in the authorizing legislation.

Both of these issues (employees changing jobs and employers ceasing participation) would be solved if the board were to allow all eligible individuals with earned income to participate in the program. Doing so would allow individuals to continue to make contributions to their Secure Choice account from a privately held bank account as opposed to from a payroll deposit. One disadvantage of this approach is that this may not allow for recurring automatic contributions, which is a central strength of the program. But allowing workers to continue participating in a retirement savings vehicle far outweighs that drawback.

Making this change has the further advantage of broadening access to a powerful savings tool to every worker in the state. The Roth structure of the accounts means that they can be used to build short-term emergency savings at the same time as long-term retirement savings. Given that almost 4 in 10 Illinoisans are liquid asset poor (38.3 percent)[45] and that about half do not have access to a retirement plan at work,[46] providing a useful savings product to underserved Illinois workers would go a long way towards improving the overall financial health of individuals in the state.

[44] Sec. 85.

[45] Assets and Opportunity Scorecard, (2015), Washington, D.C.: CFED.

[46] "Americans Without a Retirement Plan, by State," (2014), AARP, July 14, 2014.

FACILITATE PARTICIPATION AT TAX TIME

One powerful way to increase participation in retirement savings programs is to facilitate interactions with savings vehicles at tax time.[47] Allowing a taxpayer to split her refund on the tax form has been shown to be an effective way to encourage saving at tax time. The reason split refunds are so effective is that taxpayers with tight financial constraints do not have to commit to diverting their entire refund to a retirement account, but can elect to contribute merely a small portion of it to long-term savings, while still retaining the majority of the refund for short-term needs in a checking account.

Currently the Illinois income-tax form does not allow taxpayers to split their tax refunds into multiple bank accounts. Obviously a high-level change to state tax law that would allow Illinois taxpayers to split their refund into multiple accounts would be an improvement not only to the extent Secure Choice is involved, but also for the financial benefit of state residents as a whole. A complete exploration of this option is beyond the scope of this paper, but advocates for retirement security in the state should keep in mind the possibilities for future developments in this area.

Yet there are still opportunities for leveraging the tax-time moment to increase participation in Secure Choice that do not involve this high-level change. If the program were eventually opened up for voluntary enrollment by a wider group of Illinois workers, two options for leveraging tax time would become available.

The first is simply that workers could direct their refund to be deposited into their previously established Secure Choice account. This could be accomplished by assigning privately held Secure Choice accounts a routing number that could be used in the same way as a routing number for a bank. The entire refund would need to be directed to the Secure Choice account, but this could be feasible for many families because most would also receive a federal tax refund, which may be even larger, and could direct that to a checking account.

The second way to leverage the Illinois tax-time moment for Secure Choice given voluntary enrollment is to permit enrollment in Secure Choice directly on the tax form. A similar process has already been developed with much success, one that allows the buying of U.S. Treasury bonds on the federal income-tax form. This option may be infeasible in the short-term as it would require extensive collaboration between the administrators of Secure Choice and the Illinois Department of Revenue. But if properly implemented, it could be a powerful tool for increasing savings in the state.

EMPHASIZE ACCOUNT FLEXIBILITY IN OUTREACH AND EDUCATION EFFORTS

Certain requirements regarding outreach about the program are already provided for in the authorizing legislation. For example, the board is directed to create an employee information packet that would include details

[47] Rachel Black and Elliot Schreur, (2014), “Connecting Tax Time to Financial Security: Designing Public Policy with Evidence from the Field,” Washington, D.C.: New America.

about the program and the benefits of participating.[48] But one additional item that should be included in preliminary materials distributed to prospective participants is a document that emphasizes the flexibility of the accounts. Participation in retirement plans is much lower among low-income workers compared to higher-income workers.[49] Interestingly, the reasons for this are not always about a lack of access to retirement plans. Even among those in the bottom quartile who have access to an account, 60 percent do not participate in the plan.[50] It is easy to see why this is a rational response among many in this population when one considers the extent of liquid asset poverty within this group. 44 percent of U.S. households lack sufficient assets to live at the poverty line for three months.[51] Families have savings needs that require more immediate attention than retirement savings, which often require committing money to an inaccessible account for decades. By foregoing retirement savings in the short-term, they leave open the opportunity to save in more flexible vehicles for short-term needs.

Secure Choice enrollment materials should include language that emphasizes the flexible nature of Secure Choice accounts. This feature should be characterized as being a central advantage of these accounts, as they can be used for both short- and long-term needs. In this regard, the accounts are similar to another government-sponsored retirement savings product recently offered at the federal level called the myRA.[52] Both Illinois Secure Choice and myRA are structured as Roth IRAs, which allow participants to withdraw contributions at any time to meet short-term needs, while also allowing participants to get in the habit of saving for the long-term. The flexibility of retirement accounts has been shown to be a significant factor in the decision of low-income workers to participate in a plan.[53] Any funds not used for the short-term will continue to grow and be available in retirement. Emphasizing the flexible nature of the accounts has the potential to reduce the number of opt-outs; increase overall interest in the program; and potentially make the accounts even more attractive to struggling families if and when they are available for voluntary open enrollment.

PRODUCT IMPROVEMENTS

IMPLEMENT AUTO-ESCALATION NUDGES WHEREVER POSSIBLE

One of the most powerful ways to increase participation in retirement savings programs and to improve the likelihood of adequate saving rates is to make the act of saving as easy as possible. Evidence from behavioral economics bears this out.[54] Secure Choice already provides for the automatic enrollment of affected workers, but

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[48] Sec. 55.

[49] Among private-sector employees in the U.S., only 11 percent of workers in the lowest decile participated in a plan compared with 79 percent in the highest decile. "National Compensation Survey: Employee Benefits in the United States, March 2014," (2014), Washington, D.C.: Bureau of Labor Statistics, Department of Labor.

[50] Ibid.

[51] Assets and Opportunity Scorecard, (2015), Washington, D.C.: CFED.

[52] For details on the program, see Reid Cramer, Justin King, Elliot Schreur, and Aleta Sprague, (2014), "Solving the Retirement Puzzle: The Potential of myRAs to Build a Personal Safety Net," Washington, D.C.: New America.

[53] Tatiana Brezina, Kristen Tyrrell, and Joanna Smith-Ramani, (2015), "Design Recommendations for myRA, a New Savings Product for Financially Vulnerable Americans," infographic, Boston, MA: Doorways to Dreams Fund.

[54] Michal Grinstein-Weiss et al., (2014), "Refund to Savings: 2013 Evidence of Tax-Time Saving in a National Randomized Control Trial," CSD Research Report 14-03, St. Louis, MO: Washington University, Center for Social Development.

additional efforts to automatically escalate saving rates—or to nudge in that direction—would amplify the positive effects of auto-enrollment.

One of the best ways to ensure higher saving rates among participants—and by extension to give participants the best chance of achieving adequate retirement savings in the long term—is to automatically increase participants' saving rates as time goes on.[55] However, this kind of fully automatic escalation is not currently written into the authorizing legislation for Secure Choice in Illinois; implementing this program feature would require additional authorizing legislation from the legislature.

Still, there are a few ways administrators could simulate some form of automatic escalation for account holders, which could approximate some of the positive benefits of this plan feature. First, administrators could make elective changes to recurring contribution amounts as easy as possible. In the absence of auto-escalation, simply making the process of saving as easy as possible can increase saving rates and amounts.[56] Allowing participants to make changes to their Secure Choice accounts through multiple access points is an obvious place to start. For example, participants should be able to interact with their accounts with paper forms obtained at their workplace, through an online portal, over the phone, or in person at a brick-and-mortar location.

Second, once processes are in place to ensure easy account maintenance, participants should be regularly encouraged, or "nudged," to increase their savings. These nudges could take the form of displaying to participants frequent reminders of the importance of saving; offering participants many opportunities to increase their saving rates; and, perhaps most powerful of all, employing behavioral-economic concepts to make increased saving seem like the default option, or the first choice, as opposed to the status quo being the default.

Both of these plan alterations are made feasible in the Secure Choice program as currently enacted through the legal requirement for program administrators to send out individual updates and information to participants at least annually.[57] Examples of such language would be: "It's time to increase your saving rate for the New Year!" or "Increasing your saving rate by just 1% could increase your savings in retirement by $200,000!" The specific language would have to be tailored to meet legal requirements and to ensure accuracy for all affected participants, but including saving nudges could be a significant way to improve the impact of the program.

COLLECT MEANINGFUL DATA

By collecting the right data, Illinois Secure Choice could evolve into an even stronger and better-targeted program and could serve as the premier model for Secure Choice programs in other states. A robust data-collection effort should include information on contributions, withdrawals, and opt-outs. Wherever possible, the data should be disaggregated as far as possible into significant demographic characteristics. Examples of such characteristics that

[55] Jack VanDerhei and Lori Lucas, (2010), "The Impact of Auto-enrollment and Automatic Contribution Escalation on Retirement Income Adequacy," Washington, D.C.: Employee Benefit Research Institute.

[56] Grinstein-Weiss et al. (2014).

[57] Sec. 80.

often interest researchers and policymakers studying retirement are age, race, income, employment status (part-time or full-time), and education level.

Data on program contributions should include average and median contributions broken down by these demographic characteristics. This information could help researchers and policymakers draw conclusions about the extent to which certain groups are able and willing to save, given the right opportunity.

Data on withdrawals could serve the purpose of allowing researchers to draw conclusions about the extent to which workers choose to use the accounts as a flexible-savings product in addition to a retirement product. This is because by comparing contribution amounts and rates to withdrawal amounts and rates could lead to conclusions about short-term financial insecurity and the need for financial products that permit flexible uses.
If adequately sliced by select demographic characteristics, data on opt-out rates could reveal patterns of non-participation among certain groups and allow program administrators to develop strategies to better engage those individuals. In the future, this information could also be used to design effective interventions to increase saving rates and limit opt-outs by exposing targeted individuals to plan language emphasizing the program's benefits that could be most attractive to them.

STRUCTURAL ISSUES

PARTICIPATION OF INELIGIBLE INDIVIDUALS

While the program is supported by strong authorizing legislation, the language is not airtight, and legal issues may arise. One example of this weakness involves ineligible workers being automatically enrolled in the program. The purpose of Secure Choice is to cast a wide net and to automatically include as many people as possible in the plan. However, not all workers are legally permitted to contribute to a Roth IRA at all times. Program administrators must actively work to exclude these workers who otherwise may face federal legal sanctions for being automatically enrolled in a program for which they are ineligible. The occurrence of too many cases like this could bring about an undeserved public-relations debacle for the program.

There are two main cases in which ineligible workers may be automatically enrolled in the program. Both cases are likely to be uncommon given the income demographics of the target population, but they should be considered before full program implementation in order to avoid legal complications. The first case would occur when an individual who has taken the initiative to contribute to an IRA or a Roth IRA during the year is automatically enrolled in the Secure Choice program. Part of the point of Secure Choice is that the barriers to entry are low so as to make participation seem effortless for participants. Thus, it is conceivable that a person who has contributed to an IRA during the same calendar year that he is automatically enrolled in the program would end up contributing more than the legal maximum in total to IRA accounts for that year through no action of his own.

Consider a worker who makes $55,000 a year and who, because he works for an employer that does not offer a retirement plan, has diligently been making IRA contributions on his own behalf for a couple of years. If he has wisely set up automatic contributions through his bank, so that he has $150 taken out of every biweekly paycheck (about 7 percent of pay) and contributed to an IRA, he would be contributing $3,900 a year to his IRA. If he were automatically enrolled January 1st into a Secure Choice plan through his employer, then notwithstanding taxes he would just barely exceed the IRA contribution cap for that year at the time of his last paycheck.[58] While this is an extreme example, the issue is still worth considering from a legal perspective because the reason for this worker's transgression stems from an automatic-enrollment state program and not from any direct, intentional action on his part.

The second scenario in which an individual may face legal sanctions because of automatic enrollment in the program is if the individual is ineligible to contribute to a Roth IRA due to income restrictions. There are three income thresholds that are important for this scenario.[59] The first is the income threshold for single individuals. If an individual makes more than $129,000, she may not make contributions to a Roth IRA at all during the year. The second threshold is for married couples, which may not make Roth IRA contributions on behalf of either married individual if their combined income is over $191,000 for the year. It is unlikely that many households would both have incomes this high and would work for an employer in Illinois that does not already offer a retirement plan. Almost 90 percent of workers in the top decile (which group includes individuals making over $129,000) have access to a retirement plan at work,[60] which means their employer would not face the legal requirements to automatically enroll their workers in Secure Choice. Still, that leaves the possibility that some workers would fall into this category and be automatically enrolled in a program for which they are ineligible. The third important threshold is for individuals who are married, but who choose to file separately. These individuals may not contribute to a Roth IRA if their incomes exceed $10,000 for the year. Less than 2 percent of households nationally choose the married-filing-separately option,[61] but there is still the possibility that certain households would be automatically enrolled, thereby facing the possibility of legal action by federal tax authorities.

ABANDONED ACCOUNTS

As currently written, the legislation does not specify how the program should treat abandoned or inactive accounts. As discussed above, there are a number of ways this problem may arise, through both employer and employee actions. Officials overseeing program administration must consider how to handle a case in which a worker is no longer permitted to contribute to a Secure Choice account in a way explicitly authorized by the legislation. The simplest—and for the reasons above, the best—way to solve this problem is simply to broaden Secure Choice eligibility to all state residents with earned income who would otherwise be eligible for a Roth IRA. In this way, accounts would no longer be in danger of falling into a frozen state in which the only choice for the

[58] Secure Choice automatic enrollment is defaulted at 3 percent of pay, meaning his Secure Choice contributions would be $1,650 a year, which, added to his personal $3,900 in IRA contributions, would exceed the legal contribution cap of $5,500 by $50 at the end of the year.

[59] See IRS publication 590.

[60] "National Compensation Survey: Employee Benefits in the United States, March 2014," (2014), Washington, D.C.: Bureau of Labor Statistics, Department of Labor.

[61] Statistics of Income Tax Stats, Individual Statistical Tables, by Filing Status, for tax year 2012, Internal Revenue Service.

participant is to cash out the balance or to roll the funds into a less-desirable and potentially higher-fee private account.

EMPLOYER CONTRIBUTIONS

In an ideal retirement savings program, employers would be encouraged to contribute to their employees' retirement savings. Offering even a modest sum as a retirement contribution can go a long way towards helping employees meet retirement savings goals and can be a factor in workers' decisions to participate in a plan.[62]

Unfortunately, Secure Choice allows for no employer involvement in the plans, even on a voluntary basis. The main reason for this exclusion is to avoid the legal issues that would arise under the Employee Retirement Income Security Act (ERISA) if Secure Choice were to permit employer participation. Under a scheme with employer involvement, no ERISA exemptions would apply and employers would be required to assume a fiduciary role over their employees' individual accounts. This is not an unmanageable problem per se, as millions of employers around the country successfully assume this responsibility. But preventing this potential liability from falling on employers was essential for gaining the political traction necessary to enact the program.

In the future, when advocates can point to successfully operating programs in states like Illinois, state lawmakers may consider working to lobby Congress to change federal law to allow employers to make contributions on behalf of employees in state-sponsored retirement plans without having fiduciary responsibility pass from the state to individual employers. Doing so could further strengthen Secure Choice programs and amplify their positive impacts on workers' retirement security.

LEGAL IMPEDIMENTS TO IMPLEMENTATION

Written into the legislation is a short-circuit measure to prevent the program's being implemented if it is determined that Secure Choice would be regulated as an employee benefit under the Employee Retirement Income Security Act (ERISA).[63] Before implementation, the board will seek advisory opinions from federal agencies on two separate issues: whether the Roth IRAs established under the program qualify for the preferential tax treatment normally extended to Roth IRAs, and whether the program will be subject to ERISA standards as an employee benefit. If either of these issues were to be decided unfavorably (that is, favorable tax treatment does not apply or ERISA does apply), then the legislation would be defeated and implementation would not proceed.

A ruling that the Roth IRAs established under Secure Choice do not qualify for preferential tax treatment is less likely than a ruling that ERISA fiduciary obligations apply in at least some capacity. Indeed, the federal government itself appears to be of the opinion that ERISA may apply to state programs like Secure Choice without

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[62] Keenan Dworak-Fisher, (2008), "Encouraging Participation in 401(K) Plans: Reconsidering the Employer Match," Working Paper 420, Washington, D.C.: Bureau of Labor Statistics, U.S. Department of Labor.

[63] The legislative language is as follows: "The Board 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 or if it is determined that the Program is an employee benefit plan and State or employer liability is established under the federal Employee Retirement Income Security Act." Sec. 95.

an explicit waiver from the Department of Labor (DOL). In its 2016 budget request, DOL requested legislative authorization "to grant a temporary waiver of the preemption provisions of Section 514 of the Employee Retirement Income Security Act of 1974" in order to "assist in the start-up of retirement savings programs in states."[64] While this budget request should not be thought of as a definite signal of the Department's official interpretation of ERISA as it applies to programs like Secure Choice, it is still a strong indication of the Department's concern about the impact of federal law on the implementation of these programs.

There are certain exceptions, or safe harbors, to ERISA obligations written into federal law, which may permit Illinois to implement Secure Choice without ERISA complications. However, these safe harbors may not apply in a final analysis to the specific case of Illinois Secure Choice.

The Illinois Secure Choice program would have to qualify for one of these exceptions in order for employers to avoid the fiduciary obligations and liability imposed under the law. One important exception that may apply to this case is the safe harbor for employer-facilitated payroll deduction IRAs. When correctly designed, these plans allow employers to direct a portion of their employees' paychecks to an IRA without conferring ERISA fiduciary obligations on the employer. However, although Secure Choice has many features in common with plans such as these, the program may not qualify for this safe harbor status. The key question is whether employee participation in Illinois Secure Choice would be "completely voluntary," as required by regulation.[65] The act of automatically enrolling employees in a retirement plan has been interpreted by some analysts as extending employer involvement in the plan above the low-touch safe-harbor threshold necessary for payroll-deposit IRA plans to qualify for ERISA exemption.[66] Others argue on the contrary that because the state rather than the employer is requiring employees to opt-out of the program if they so wish, there is no ERISA liability for the employer.[67]

Another safe-harbor provision that may apply to Secure Choice allows employers to join a multiple employer plan (MEP). These arrangements remove fiduciary obligations from individual employers and place them instead on the overarching entity that sponsors the plan for multiple employers. However, there is a strong argument to be made that Secure Choice does not qualify as a multiple employer plan. A recent DOL opinion affirms that there must be a genuine economic connection between participating employers for the plan to qualify as an MEP.[68] Employers participating in Secure Choice may be interpreted as having no similarities other than the inherent ones of operating in Illinois and being required to participate in Secure Choice. In this case, even if the state were

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[64] "Appropriation Language," (2015), *FY 2016 Congressional Budget Justification*, Employee Benefits Security Administration, Department of Labor.

[65] 29 C.F.R. 2510.3-2(d)(ii).

[66] See Davis and Harman, (2012), "Application of ERISA to SB 1234," letter to Walter Welsh and James Szostek, American Council of Life Insurers, July 16, 2012, published by U.S. Retirement Facts; Davis and Harman, (2014), "Supplemental Memorandum on Application of ERISA to State Mandatory Automatic Enrollment Retirement Plans," letter to Walter Welsh and James Szostek, American Council of Life Insurers, February 28, 2014, published by U.S. Retirement Facts.

[67] David E. Morse, (2014), "State Initiatives to Expand the Availability and Effectiveness of Private Sector Retirement Plans: how Federal Laws Apply to Plan Design Options," Washington, D.C.: Center for Retirement Initiatives, Georgetown University; Robert J. Toth, (2014), "The Impact of ERISA on State-Sponsored Retirement Plan Designs," AARP Public Policy Institute.

[68] Department of Labor Advisory Opinion 2012-04A.

determined to be exempt from ERISA fiduciary obligations through an interpretation of federal law, individual employers would not be exempt from ERISA fiduciary obligations under this safe harbor. Consequently, the program would run into the ERISA short-circuit and not be implemented.

On the other hand, one argument that employers may be exempt from ERISA obligations is found in an open letter recently sent by the DOL to the Department of the Treasury concerning the Treasury Department's new myRA program.[69] In the letter, DOL expressed its opinion that ERISA does not apply when the employer "is encouraging employees to take advantage of services or benefits offered by the federal government."[70] The key to the reasoning here is that the government (specifically the federal government) is a unique entity when it comes to retirement savings vehicles, and that its products need not be subject to the same legal scrutiny as privately offered ones, even when the government product is offered to non-governmental employees.[71] The question for Illinois Secure Choice is whether this special status is interpreted as extending to state programs as well.

Still, even if ERISA obligations are found to not extend to employers participating in Secure Choice, there still remains the possibility that the State of Illinois or its agents retain fiduciary obligations under ERISA. This, too, would prevent Secure Choice from being implemented under the framework established by the authorizing legislation. Theoretically, there is no reason Illinois could not simply accept the responsibilities of an ERISA fiduciary for the purposes of establishing a universal retirement savings plan. Indeed, Massachusetts is on track to implement just such a program.[72] One downside of this approach is that the state cannot require employers to participate in an ERISA plan, and thus the number of participating employers and employees may be lower.[73] For political and administrative reasons, Illinois Secure Choice was designed to avoid these fiduciary responsibilities. Unfortunately, federal interpretation of the law may require the state to retain some ERISA obligations since state officials appointed pursuant to Secure Choice will take on duties functionally similar to those assumed by fiduciaries of traditional retirement plans.

The persistence of complicated federal legal issues surrounding state-sponsored retirement savings plans like Illinois Secure Choice speaks to the need to update laws at the federal level. Lawmakers and advocates intent on improving retirement security should look for opportunities to build bipartisan support for improving the

[69] John J. Canary, (2014), Information Letter to J. Mark Iwry (Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy, U.S. Department of the Treasury), Employee Benefits Security Administration, December 15, 2014.

[70] This exception applies specifically to the ERISA requirement for employers to "prudently select the IRA or monitor the provider." The rationale is that ERISA was intended to protect workers from unscrupulous plan sponsors or financial-service providers, but that when the government is involved (specifically the federal government), this concern is less acute.

[71] The other important difference is that myRAs are opt-in accounts, while Secure Choice is opt-out. However, the emphasis that the advisory opinion placed on the role of the federal government in offering the plans suggests that the crux of the legal decision turned on the government's role in the plan.

[72] HR 3754, titled "An Act Providing Retirement Options for Nonprofit Organizations," was passed by the Massachusetts legislature in March 2012. The program will be called the Massachusetts CORE 401(k) plan (the acronym is for Connecting Organizations to Retirement). The state will accept ERISA fiduciary obligations as the sponsor of an MEP plan, while employers will have to accept only minimal ERISA obligations. *See* Morse (2014). As of June 2014, the plan is still on track: *see* "Grossman and Jakious Announce Major Step Forward in Creation of Non-Profit Retirement Plan: IRS Decision Brings Proposal to Expand Access to Tax Deferred Savings One Step Closer," (2014), Press Release, Massachusetts Department of the State Treasurer, June 9, 2014.

[73] Robert J. Toth, (2014), "The Impact of ERISA on State-Sponsored Retirement Plan Designs," AARP Public Policy Institute.

retirement savings landscape by amending federal laws to permit greater state experimentation with promising retirement-security policies such as Secure Choice.

CONCLUSION

The implementation of the Illinois Secure Choice Savings Program represents a major step forward in the effort to respond to the challenge of ensuring workers are able to meet their retirement security goals. While not the first state to envision a program of this kind, Illinois has emerged as a national leader in shaping the future of retirement security federalism. By directly adopting a plan, Illinois legislators have "broken the ice," and Illinois Secure Choice offers an opportunity for stakeholders in other states to study the effects of a state retirement savings program and to learn from the challenges encountered along the way. National retirement security advocates can study the contemporaneous implementation of Illinois Secure Choice with the ongoing Secure Choice process in California and other states. The existence of multiple programs allows experts to compare policy models and work to derive evidence for best practices in future programs.

While many design decisions remain to be made, the Illinois Secure Choice Savings Program is a well-designed program that incorporates key elements necessary for successful implementation. As other states continue to explore how they might respond to the retirement security challenge, policymakers would do well to look to Illinois as a model for policy solutions in their states, while being cognizant of the fact that there are opportunities for improvement and innovation. With certain changes, such as expanded eligibility, emphasis on flexibility, and behavioral nudges to improve saving behaviors, the Secure Choice model could become an even more powerful policy lever to promote retirement security across the country. In light of stalled efforts at the federal level, state efforts will likely continue to be the primary source of meaningful policy solutions to help Americans prepare for a more financially secure retirement. These efforts embody the concept of federalism at its best. State policy innovations do not simply reverberate within the confines of one state's borders, but when studied, adapted, and replicated, resonate across the country to deliver broader and more lasting success.