As the Clock Ticks, Senate Stalls on State-Run Retirement Plans.

Congress could overturn a rule that allows states to create private-sector retirement programs. But it only has a limited time to do it.

Late last month, Congress voted to overturn an Obama-era rule that cleared the way for cities to create retirement programs for private-sector workers that didn't have one through their employer. But a similar resolution targeting the rule as it applies to states is stuck.

For the past three weeks, that resolution has lingered in uncertainty as the Senate stalls on taking an up or down vote. Many believe that signals an opportunity. "Based on the conversations we've had with staff and colleagues working on this," says Cristina Martin Firvida of AARP, which supports the Obama-era regulation, "I think there are a number of senators who still have a lot of questions about the state rule."

The rule, which was issued by the Department of Labor, reaffirmed cities' and states' legal right to help support private-sector savings programs for small businesses. Seven states are implementing such programs, while another dozen states and cities are considering them.

Called Secure Choice or Work-and-Save, the programs require most employers that don't currently offer a pre-tax retirement savings program to automatically enroll employees into one. They run independently from the state, employers don't contribute and employees can opt out at any time. The goal is to close what many feel is a retirement security gap among working Americans: Half of private-sector workers don't have an employer-sponsored retirement plan, and only a small percentage of those 57 million people have saved enough on their own to retire.

Studies have shown that these programs don't just help the individual but the states too. A recent analysis by Segal Consulting found that if all workers gain access to retirement plans, then states would save big on future Medicaid costs because vulnerable households would be removed from the poverty rolls by the time they retire. In the first 10 years after a retirement savings plan is introduced, 15 states would save more than $100 billion in Medicaid payments. California and New York alone would save more than $1.1 billion.

But in February, the House quickly passed two resolutions that overturned the Labor Department rule as it applied to cities and states. The Senate approved the resolution for cities a few weeks later, and it was signed by President Trump this month.

Even if the Senate overturns the state rule, it's unclear if it would impact those places that have already approved a Secure Choice program. Sarah Mysiewicz Gill, senior legislative representative for AARP, says most of these places approved their plans before the Labor Department clarified the rule last year. One such place, Oregon, is still moving ahead with its plans to launch a preliminary version in July.

Still, overturning the rule would open states to the possibility of lawsuits. The Labor Department rule exempted Secure Choice programs from the federal Employee Retirement Income Security Act, which governs private retirement plans and requires certain legal and financial protections for plan enrollees. In other words, someone could sue a state for allowing private-sector retirement programs that don't have the same fiduciary protections for enrollees that traditional, employer-sponsored plans have.

On top of that, many are worried that a rejection from Congress could have a chilling effect on the growth of such programs. That's already happened in Montana. A day after the U.S. Senate overturned the rule for cities, the state legislature reversed course and voted down a proposal to create a statewide Secure Choice program. "There was a belief that the city rule impacted the state," says Gill.

Advocates for Secure Choice say the reason the Senate hasn't voted to overturn the state rule yet is likely ideological. During the debate this year on health care, those that wanted to repeal the Affordable Care Act argued that states should have more control over their own health systems. Voting to repeal a rule that gives states more flexibility when it comes to retirement saving programs would be in direct conflict with that idea.

"I think there are a number of senators who have a somewhat cautious feeling about voting for this because it does fly in the face of states' rights," says Diane Oakley, executive director of the National Institute on Retirement Security.

Unlike most things in Congress, this uncertainty for states does have a deadline. The resolutions are subject to the Congressional Review Act, so if the Senate does not follow the House and vote to reverse the rule by mid-May, it will stand.

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