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## State Run Plans: Why ERISA Protections Should Apply to Private Sector Workers

Enacted in 1974, the Employee Retirement Income Security Act (ERISA) protects employee retirement accounts by ensuring protections of plan participants through a uniform federal standard of conduct on all plan sponsors and plan fiduciaries. Plans for private sector employees must fully satisfy ERISA requirements and provide employees with the protections of federal law.

Proponents argue that ERISA should not apply to a state run plan. Shouldn't private sector employees have ERISA rights and protections?

As the U.S. Department of Labor Advisory Opinion to Connecticut Governor Malloy makes clear, a plan for private sector workers would be subject to ERISA. The state, state officials, those governing the plan, and each participating employer: (1) would be required to comply with ERISA; (2) have would have an ERISA fiduciary duty of care to participants and beneficiaries; and (3) would be personally liable under ERISA for actions or inactions regarding duties relating to:

- plan investments;
- costs and fees paid by the plan;
- services provided to the plan;
- transactions (prohibited or otherwise) between the plan and service providers; and
- compliance with federal filings, participant disclosures, and other ERISA requirements.

In another Advisory Opinion, the U.S. Department of Labor held that each unrelated employer in a multiple employer plan will be treated as sponsoring a single employer plan for purposes of ERISA. In addition, under the tax qualification rules including the nondiscrimination rules, non-compliance by one employer in a multiple employer plan could jeopardize the favorable tax treatment of the entire plan for all employers and all participants.

The only way to resolve these ERISA issues is with federal legislation. In fact, a number of nation-wide federal solutions are already under consideration in Congress.

The bottom line is that a state run plan for private sector workers subjects a state and its participating employers to costs, risks and potential liabilities. That's why state agencies such as the California Department of Finance, the Maine Department of Labor, the Washington Department of Retirement Systems and others have expressed concern about the feasibility and costs of similar programs. It's also why no other state has implemented such a plan. Instead of a state plan, states should encourage employers to offer a savings plan to its workers and encourage worker to take advantage of opportunities to save for retirement.

**American Council of Life Insurers** 101 Constitution Ave, NW, Suite 700, Washington, DC 20001-2133