NPRC
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Perspectives on the Responsibility of Secure Choice Organizations to Guard against Wage Theft
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During a recent meeting with a state Secure Choice retirement savings organization[i], it was explained that some constituents are concerned that the system should protect against employers that could withhold retirement contributions but not remit them. It was suggested that the Secure Choice organization may contact employers to ask about variations in expected contributions; for example, if no contributions are made for a month for an active participant.

NPRC[ii] members are concerned that this may jeopardize the overall program by diverting resources that should be focused on achieving core priorities of expanding retirement savings in a sustainable way.

Secondly, efforts to inquire about missed or reduced contributions could be both high volume and time-intensive, representing a significant additional employer responsibility that could be perceived as more burdensome than any other employer responsibility for Secure Choice program administration.

We suggest that prevention of wage theft, while an important issue, is not a core responsibility of Secure Choice organizations. The good news is that the technologies employed by Secure Choice organizations will naturally identify and mitigate wage theft quickly. Further, other government authorities that have a far greater stake and far greater resources to address the problem. Wage theft is an issue that may be more effectively addressed by agencies whose central mission is wage protection. A coordinated state/federal response would be more effective and less burdensome than uncoordinated efforts.

Directionally, Secure Choice organizations face a key decision. One direction leads to simplicity, but perhaps more responsibility for accountholders to remain engaged. The other direction leads to complexity, high workload and high operating costs. These points are further explained below.

Disruptions and Variable Contributions May be Common

First, missed or reduced contributions could be very common in the U.S., especially among tipped employees, whose wages can be insufficient to cover all deductions. Wages naturally vary significantly from month to month, for a number of reasons; e.g.:

- Seasonal increases and reductions in hours worked
- Overtime, holiday/shift premiums
- Bonus/profit sharing
- Commissions
- Routine turnover (workers starting and leaving jobs or the work force)
- Part-time, seasonal, contingent and temporary services workers often have highly volatile wages

The Federal Reserve’s 2013 Survey of Household Economics and Decisionmaking found that 21% of respondents experienced some unusually high or low income months, and an additional 10% reported their income often varies “quite a bit” from one month to the next. The U.S. Financial Diaries’ year-long study of low- and moderate-income households revealed that the households experienced on average five out of twelve months with a change in income of over 25% (roughly split between rises and falls). Using proprietary data, the JP Morgan Chase Institute observed that between 2012 and 2014, four in ten individuals saw more than a 30% month-to-month fluctuation in income.

- 40 percent of workers ages 25 to 55 experience changes in year-to-year earnings of 25 percent or more.
    - More than a quarter move into or out of employment within a year.
    - Employees that are unmarried, younger, have less education/lower earnings have higher volatility

Source: CONGRESSIONAL BUDGET OFFICE, Recent Trends in the Variability of Individual Earnings and Household Income, 2008; Federal Reserve: Earnings Variability in the United States, Columbia University & Federal Reserve Bank of NY, 1998

Findings by a Pew Charitable Trusts study were consistent:

> *In any given two-year period, nearly half of households experience an income gain or drop of more than 25 percent, a rate of volatility that has been relatively constant since 1979.”*
>
> - The Precarious State of American Family Finances, January 2015

Millions of workers receive substantial cash tips, relative to total compensation. Tipped workers must periodically report the aggregate amount of cash tips received to their employer, so that the employer can calculate total federal, state, local and Social Security/Medicare tax withholding on the basis of wages plus tips. Wage amounts are sometimes insufficient to pay all taxes associated with tips.

Routine employee turnover would represent a particularly significant challenge for Secure Choice organizations. In ballpark terms, there are roughly 160 million U.S. employees, yet employers file about 250 million Forms W-2 each year. But in some industries, turnover exceeding 100% is normal, and many employees have several jobs in a year. Employers are required to report the hiring of new employees to a state directory of new hires, but do not report employee separations. Thus, state retirement savings plans should expect a high volume of disrupted contributions, which can be temporary or permanent with respect to a particular employee and employer.

Effect of Garnishments

Variability and possible disruptions in retirement contributions may be further compounded for workers with garnishments. A recent study revealed that approximately seven percent of the U.S. workforce has a wage garnishment. (3.4% child support; 2.9% student debt or consumer loan; 1.5% tax levy, and 0.4% bankruptcy.)

> Source: ADP Research Institute, The U.S. Wage Garnishment Landscape: Through the Lens of the Employer, 2017

Garnishments and other types of withholding have greater priority than retirement contributions. Tipped employees in particular sometimes have more withholding obligations than can be covered by available wages, especially if they have a child support order or garnishments. This might result in employees being active on a Secure Choice retirement savings program with a specific percentage elected, but no contributions, sometimes for weeks or even months. Generally the priority of withholding follows:

- Social Security/Medicare tax
- Federal, state and local income taxes
- Disability plan premiums
- Child Support
- Tax levies, Bankruptcy and Student Loan Garnishments
- Medical Insurance
- Pension contributions and deferred compensation
- Voluntary deductions

Prevention of Wage Theft is Not a Core Responsibility of Secure Choice organizations.

- Active efforts to detect and prevent wage theft may jeopardize the overall retirement savings program by diverting resources that should be focused on achieving core priorities.
- Other government agencies (e.g., tax authorities and workforce/Labor agencies) have far greater exposure to wage theft. These agencies have decades of experience with employer withholding, and far more resources than a Secure Choice organization will have.
- Retirement contribution amounts at stake are relatively small; e.g., 5% - 10% of wages, compared to federal income tax and Social Security/Medicare, which are roughly 15% - 35%. State income tax withholding is often greater than retirement contributions.
    - A bad actor intending to divert employee wages would recognize that the opportunity to steal taxes is far greater and has far less chance of detection than retirement contributions.
- Secure Choice organizations should consult with the tax authorities and workforce/Labor agencies to assess how they manage exposure.
    - For example, the IRS is testing a new "early intervention" system to ask employers about statistically significant reductions in aggregate tax deposits.
- Secure Choice programs will feature natural protections because employees will be able to view contributions posted to their account within days of withholding. It only takes one employee to notice that amounts are not posted to raise an alarm.
- **Secure Choice organizations should defer to those government authorities that have greater risk and exposure to wage theft, and greater enforcement resources and capabilities.**
    - Consider aligning with the state tax authority to audit for handling of retirement contributions when auditing employer compliance
    - Collaborate with state Workforce/Labor departments, whose central mission is wage protection. A coordinated state program would be more effective and less burdensome than uncoordinated efforts.

Would Multiply Employer Burden

Any effort to inquire about missed or reduced contributions would represent a significant additional employer burden that could be greater than every other employer responsibility for Secure Choice program administration combined. The vast majority of burden would be shouldered by employers that have done nothing wrong

Programs to date have been designed to limit employer involvement:

- Employer registration (one time)
- Disclosures (one time; ad hoc for new employees)
- Enrollment (one time; ad hoc for new employees)
- Remit amounts withheld (ongoing)
- Manage employee elections - opt-in/out; adjust withholding percentages (ad hoc, annual)

What would it take to guard against wage theft?

- Employers would need to report the specific payroll schedule for each employee
  - Employers frequently have different payroll schedules for different locations, positions, divisions, etc.
- Employers would need to report payroll deduction amounts to expect from each employee
- The Secure Choice organization would then need to inquire about variations in amounts received versus expected, and/or employers would need to report disruptions or wage variances, such as leaves of absence, routine scheduled time off, workers compensation/injuries, reductions in hours, new garnishments received, etc..

UK NEST Program Offers Insights as to the Complexities Inherent in Monitoring Contributions

- See, for example, the UK NEST Payroll Guide (123 pages), which explains how employers should register employees, including payroll schedules, expected contribution amounts and disruptions or variations in contributions. Excerpts:
  - start date depends on the category of worker . . . not necessarily the date that you enroll . . date your pension duties apply to them . . your staging date, your deferred duty date if you're using a waiting period or the date they become an eligible jobholder.
  - Let NEST know when members opt out, stop contributions, change groups or change payment source
  - Let NEST know you're using one of the available reasons why you're not making a payment for a member
  - Submit an exception schedule for payments not tied to a pay period. For example, if there's a shortfall in minimum contributions paid during the year, a member is enrolled late or for payments made after a member leaves employment.
  - Approve contribution corrections - see section 3.1.4
  - Let NEST know when there are multiple members who have insufficient earnings for a pay period

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Recommendations

- **Design systems to expect variations in contributions, including several weeks or months with no contributions**
- **Consider notifying employees if no contributions are made over a specified period. This would prompt employees to check their accounts and take action if amounts were withheld but not remitted.**
    - This could be an opportunity to nudge employees who have actually stopped contributing as well as helping to stop wage theft without a great burden on employers.
- **Provide for optional employer reporting of terminations; e.g., by adding an indicator to the electronic payment addenda record.**
- **Collaborate with other government authorities that have greater risk and exposure to wage theft, and greater enforcement resources and capabilities.**

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[i] Secure Choice retirement savings organizations refer generally to state programs enacted through legislation that require employers that do not already offer a qualified retirement savings plan to enroll workers in a state-run retirement savings plan, and to make and remit payroll deductions. These programs feature automatic enrollment and automatic escalation of retirement contributions, and are designed to minimize employer involvement. As of January 2018, states with such legislation include CA, CT, IL, MD and OR, but other states and cities are considering similar programs.

[ii] The National Payroll Reporting Consortium ("NPRC") is a non-profit trade association whose member organizations provide payroll processing and related services to nearly two million U.S. employers, representing over 36% of the private sector workforce. Payroll service providers have long served an important role as a conduit between employers and government authorities. Payroll service providers improve the efficiency of government tax collections and reporting through electronic payment and reporting programs, and improve employer compliance.

NPRC is strictly neutral on all policy questions, such as whether retirement savings legislation is necessary or beneficial. However, we serve to offer constructive industry expertise as to technical issues affecting employer reporting and withholding administration.

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