AUTOMATIC ENROLLMENT IN THE 457(b) DEFERRED COMPENSATION PLAN
versus
MONTANA'S WAGE PAYMENT ACT

The following statute is a source of concern regarding implementation of automatic enrollment in the state's 457(b) Deferred Compensation Plan.

39-3-204. Payment of wages generally. (1) Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and ***a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in 39-3-205. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or as otherwise provided for by law.***

* * *

Compiler's Comments:

2009 Amendment: Chapter 26 in (1) at end of first sentence after "payable" inserted "except as provided in 39-3-205" and near end of second sentence after "employment or" substituted "as otherwise" for "other deductions"; and made minor changes in style. Amendment effective March 20, 2009.

The 2009 amendment allowing deductions "as otherwise provided for by law" was enacted to address the payment of wages owed to an individual discharged for the theft of property or funds from the employer. See HB0101 (2009) (included). There are currently no other exceptions to the mandate contained in § 39-3-204, MCA.

In order to implement automatic enrollment, the legislature must specifically provide in law that public employers may automatically deduct a certain dollar or percentage amount from their employees' wages for deferral into the state's 457(b) deferred compensation plan. Several issues would require consideration, including the amount of the deferral, whether automatic enrollment would apply only to state employees or to all public employees, and whether the employer would have the option to elect not to participate in automatic enrollment.

We would also need to confer with employer groups and unions to determine whether they would be receptive to this type of legislation.

Linda Ulrich has graciously provided "A Case Study of South Dakota's Supplemental Retirement Plan" which addresses many of the same issues. It is enclosed for your review.

AN ACT REVISING THE TIME PERIODS WITHIN WHICH AN EMPLOYER MAY WITHHOLD MONEY FROM AN EMPLOYEE'S FINAL PAYCHECK IN CASES OF THEFT OF PROPERTY OR THEFT OF FUNDS; AMENDING SECTIONS 39-3-204 AND 39-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-204, MCA, is amended to read:

"39-3-204. Payment of wages generally. (1) Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in 39-3-205. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or ~~other deductions~~ as otherwise provided for by law.

(2) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

(3) If an employee submits a timesheet after the employer's established deadline for processing employee timesheets for a particular time period and the employer does not pay the employee within the 10-day period provided for in subsection (1), the employer may pay the employee the wages due in the ensuing pay period. An employer may not withhold payment of the employee's wages beyond the next ensuing pay period. If there is not an established time period or time when wages are due and payable, the pay period is presumed to be semimonthly in length."

Section 2. Section 39-3-205, MCA, is amended to read:

"39-3-205. Payment of wages when employee separated from employment prior to payday -- exceptions. (1) ~~When~~ Except as provided in subsection (2) or (3), when an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

(a) the employee agrees in writing to the withholding; or

(b) the employer files a report of the theft with the local law enforcement agency within 7 business days of the separation from employment, subject to the following conditions:

(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within ~~15~~ 30 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the ~~15-day~~ 30-day period.

(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

HB 0101, originated in the House.

____

Chief Clerk of the House

____

Speaker of the House

Signed this______________________________day

of___________________________________, 2009.

____

President of the Senate

Signed this______________________________day

of___________________________________, 2009.

HOUSE BILL NO. 101

INTRODUCED BY J. WELBORN

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT REVISING THE TIME PERIODS WITHIN WHICH AN EMPLOYER MAY WITHHOLD MONEY FROM AN EMPLOYEE'S FINAL PAYCHECK IN CASES OF THEFT OF PROPERTY OR THEFT OF FUNDS; AMENDING SECTIONS 39-3-204 AND 39-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Retirement Made Simpler

HELPING YOU AUTOMATE YOUR 401(k) STEP-BY-STEP

Adopting Automatic Enrollment in the Public Sector:

A Case Study of South Dakota's Supplemental Retirement Plan

Commissioned by
Retirement Made Simpler

Robert Clark, North Carolina State University
Joshua Franzel, The Center for State and Local Government Excellence

About Retirement Made Simpler

Retirement Made Simpler is a coalition formed by AARP, the Financial Industry Regulatory Authority (FINRA) and the Retirement Security Project (RSP). The campaign was created specifically to inspire and support employers who want to help their employees save more for retirement. By providing companies with the tools and information they need to automate their defined contribution plans, more Americans will achieve a safe and secure retirement. For more information, visit www.RetirementMadeSimpler.org.

About the Authors

Robert L. Clark is a professor of economics and of management, innovation, and entrepreneurship in the College of Management, North Carolina State University.

Joshua M. Franzel is vice president of research for the Center for State and Local Government Excellence.

Executive Summary

This Retirement Made Simpler report examines the background and passage of automatic enrollment legislation in South Dakota and its initial impact on participation rates in the state's defined contribution retirement plan. Although still in its early stages, it is already clear that automatic enrollment is positively affecting participation rates in South Dakota's Supplemental Retirement Plan (SRP). Prior to the policy change, about 20 percent of all eligible employees participated in the SRP. Eight months after the passage of automatic enrollment legislation, 91 percent of new, eligible employees whose units chose to implement automatic enrollment participated in the plan and remained in it. In striking contrast, only 1 percent of employees in government units that had not implemented automatic enrollment voluntarily enrolled in the SRP. Opt-out rates suggest employee satisfaction with the policy. Of the 1,172 new hires that were enrolled, 102 opted out, an 8.7 percent opt-out rate.

This report provides background on the South Dakota Retirement System and chronicles the development and passage of automatic enrollment legislation. It provides an early-stage look at participation data, including enrollment and opt-out rates, and concludes by outlining aspects of South Dakota's experience that other states might learn from when considering adopting automatic enrollment.

Introduction

Between 1998 and 2000, Internal Revenue Service (IRS) rules began to allow for new and current private sector employees to be automatically enrolled in a defined contribution retirement savings account offered by their employer.[1] These rules, combined with passage of the Pension Protection Act of 2006, have led to an increase from 1 percent of all plans in 2004 automatically enrolling participants to 16 percent of all plans in 2009, with this 16 percent of plans accounting for almost half of all plan participants nationwide.[2] The private sector continues to view automatic enrollment as an important way to encourage employee saving for retirement, a feature that is also receiving increased attention in the public sector.

As of 2010, 20.9 percent of respondents in a survey of state and local governments reported that their governmental unit has instituted some form of automatic enrollment feature in their defined contribution retirement plan.[3] As of 2010, a few states have adopted an automatic enrollment feature in their defined contribution plan. One such state is South Dakota.

South Dakota's Supplemental Retirement Plan (SRP) is a 457 plan, a tax advantaged deferred-compensation retirement savings plan offered to members of the South Dakota Retirement System (SDRS). The SRP allows participants in SDRS to save for retirement while postponing the payment of income tax on both contributions and earnings until these funds are withdrawn. All members of SDRS have the option of participating in the SRP.

Prior to July 2009, newly hired public employees were given the option of completing SRP enrollment forms which required them to specify a monthly contribution and an investment choice. If the workers did nothing, they were not enrolled in the plan and no monies were withheld for their pay. Subsequently, workers could decide to begin making contributions at any time during their tenure.

In 2008, the South Dakota Legislature enacted legislation that modified the SRP enrollment process. As a result, instead of being out of the plan unless they actively chose to become participants in the SRP, newly hired workers are automatically enrolled in the SRP with a minimum contribution and a default investment option. Workers may choose to opt-out of the system and stop contributions within 90 days of their first pay date and get back all of their contributions, adjusted for investment gains or losses.

This report examines the process that led to the passage of the legislation and the initial impact that automatic enrollment is having in South Dakota. We begin with an overview of the retirement plans offered to public employees in South Dakota including a mandatory defined benefit plan, the SRP and the retiree health plan for covered workers. Next, we present the details of the enabling legislation for automatic enrollment in the SRP, describe the policy debates associated with the legislation, and cover how the legislation was implemented. We conclude by highlighting some of the early data that has been collected on the initial implementation of automatic enrollment and its effects on participation in the SRP.

Retirement Benefits for Public Employees in South Dakota

An assessment of the impact of automatic enrollment in the SRP requires an understanding of the total package of retirement benefits offered to South Dakota public employees since the plans, together, are designed to supplement Social Security and Medicare to provide financial security and health care in retirement. Additionally, retirees of the State of South Dakota and the South Dakota Board of Regents (which includes public universities) are eligible for coverage under the state health plan.

All employees are required to participate in the SDRS, which is a defined benefit pension plan. The plan is financed by employer and employee contributions and provides a benefit equal to about 50 percent of final salary for a retiree with 30 years of service. Retired State of South Dakota and South Dakota Board of Regents employees are allowed to remain in the state health plan up to age 65 by paying the specific premium. Employees are eligible to participate in the SRP, which is a qualified plan that allows individuals to contribute pre-tax dollars. The basic characteristics of the South Dakota retirement plans are described below, including how they are linked to Social Security and Medicare.

South Dakota Retirement System.

The South Dakota Retirement System (SDRS) is made up of 479 governmental units encompassing about 72,000 members and their families. Today, SDRS serves 182 school districts, 144 municipalities, 64 counties, 87 boards and commissions, the departments and other units of the State of South Dakota, and South Dakota Board of Regents employees. Members include:

- Teachers, administrative and classified employees of South Dakota public school districts
- Legislative, executive and judicial branch employees of the state of South Dakota
- Faculty, administrative and classified employees of the South Dakota Board of Regents
- South Dakota municipal employees
- South Dakota county employees

South Dakota was one of the last states to establish a pension plan for its state employees. The development of public pensions in South Dakota follows the history of retirement plans for state and local employees across the country.[4] The first state-wide public pension plan in South Dakota covered teachers and was established in 1939; however, this plan was liquidated in 1951 and a new teachers plan was started in 1959. The teachers plan was followed by separate plans covering supreme and circuit court judges (1951); state law enforcement officers (1957); municipal police officers (1961); university personnel (1964); municipal employees (1965); general state employees (1967) and finally district, county and municipal judges (1972). These public pension plans differed in their eligibility and administrative requirements, benefit formulas and generosity, and funding levels.

Between 1972 and 1974, the state legislature considered the merits and problems associated with retaining such a variety of retirement plans for public employees. In 1974, the legislature passed a bill consolidating all of these retirement programs into the SDRS, governed by a Board of Trustees with representatives from all groups covered by the system.

To be eligible to receive a pension benefit through the SDRS, an individual must be at least 55 years old and have three years of service. Following the pattern of most state plans, the benefit formula has been periodically increased to provide greater retirement income to career employees. After consolidation, the initial benefit formula was 1 percent of final average salary per year of service. The benefit structure has been increased 10 times over the past three decades and the salary multiplier reached 1.7 percent in 2008. As a result of these improvements, the cost of providing SDRS benefits rose from 7.1 percent of payroll in 1978 to 12 percent in 2006. In 2008, both the employee and employer contributed 6 percent of salary to SDRS.

Participation in the SDRS has grown substantially since its establishment in 1974 when 23,500 public employees were in the system of whom 2,900 were beneficiaries.[5] In 2008, total participation had reached 71,434 with 19,321 retirees and beneficiaries.[6] The SDRS has been reasonably well funded throughout its history. The auditors' report of the financial status of the retirement fund for the year ended June 30, 2008 indicated that the plan had liabilities of $6.98 billion and assets of $6.78 billion or an unfunded liability of $192 million. The plan was 97.2 percent funded and the unfunded liability represented 14.1 percent of covered payroll.[7]

The SDRS has three unique features that affect benefits workers can expect.

- First, employer and employee contributions are fixed as a percent of salary in the statutes. If these contributions are not sufficient for the plan to maintain a funding ratio of at least 80 percent of promised benefits, benefits must be reduced.
- Second, the plan provides an automatic cost of living adjustment (COLA) and the COLA is also applied to deferred vested benefits of terminated employees.
- Third, workers leaving public employment with less than three years of service receive a refund of their own contributions

and 50 percent of the employer contributions plus interest. Workers with more than three years of service receive their own contributions plus 85 percent of the employer contributions plus interest if they request a lump sum distribution.[8] Both of these latter two features treat departing employees much more generously than most state pension plans.

Public employees in South Dakota are also covered by Social Security and thus accrue a Social Security retirement benefit based on their career earnings. Since the worker and employer both contribute 6.2 percent of pay for Social Security benefits, public employees in South Dakota pay a total of 12.2 percent of their salary for SDRS and Social Security benefits. South Dakota public employers contribute an equal amount.

The retirement benefit earned by public employees plus the retirement benefit from Social Security will provide a combined retirement benefit equal to approximately 85 percent of final earnings for most career employees with 30 or more years of service. This level of retirement income is approximately the replacement rate that would allow a worker to maintain his or her living standard in retirement.

Supplemental Retirement Plan.

While the SDRS pension and Social Security benefits will provide about 85 percent of pre-retirement income for employees with at least 30 years of service, retiring public employees in South Dakota average 20 to 25 years of service. Workers with the average length of service will typically have replacement rates from Social Security plus their SDRS pension of about 75 percent of final pay. In order to provide the additional retirement income needed to maintain workers' pre-retirement level of income, the SDRS established a tax advantaged deferred-compensation retirement savings plan in 1987. This "457 plan," known as the Supplemental Retirement Plan (SRP), is promoted by SDRS and managed by Nationwide Retirement Solutions, Inc.

Under the SRP, state employees are allowed to make optional pre-tax contributions to augment their retirement income. The plan is considered to be an integral component of retirement benefits and employees are encouraged to participate in the SRP when planning for retirement. An interesting and unique aspect of this plan is that workers at retirement can withdraw the funds in their SRP account and purchase a higher pension benefit from the SDRS. This provides a convenient method of converting the account balance into a life annuity that will receive the same COLA as the SDRS benefit.

After considering national trends in savings rates and the need for additional retirement income for participants in the South Dakota retirement plan, the SDRS decided to increase the prominence of the SRP. Changes included revising the SDRS mission statement to emphasize the need for additional personal saving through the supplemental plan and adopting automatic enrollment in the SRP for newly hired employees.[9]

Prior to 2009, newly hired workers had to make a positive election to participate in the SRP: if the employee did nothing, he or she was not enrolled in the plan. In 2008, the state legislature passed a bill authorizing automatic enrollment so that newly hired employees were enrolled in the SRP at a minimum contribution of $25 per month. This report examines the process that led to the adoption of automatic enrollment and its impact.

Retiree Health Insurance.

Retired State of South Dakota and South Dakota Board of Regents employees who are receiving a benefit from the SDRS are eligible to participate in the state health insurance plan if they are age 55 to 65. Eligible retirees are covered by the same health plan as active employees and must pay a premium to be included in this optional coverage. The annual premium is specified each year and future retirees' premiums will increase at a rate equal to the trend rate for health care costs. Coverage is also extended to dependents for an additional premium. Participation in the health plan is terminated when retirees reach age 65 and qualify for Medicare. After age 65, the retiree must depend on Medicare coverage and any additional insurance the individual may purchase. The retiree health plan actuaries assume that 70 percent of employees will elect to participate in the state health plan in retirement.

When planning for retirement, public employees in South Dakota are encouraged to consider the cost of remaining in the state health plan from retirement until age 65, the cost of Medicare premiums from age 65 until death and the cost of any supplemental or "Medigap" coverage. A key factor in retirement planning is determining whether retirement income from SDRS and Social Security is sufficient to allow a retiree to continue their standard of living and to pay for health insurance or if additional personal saving through the SRP is advisable.

Automatic Enrollment Legislation and Implementation

The SDRS developed recommendations for automatic enrollment that were incorporated into legislation that was submitted to the state legislature. These recommendations came from SDRS staff, consultants, the plan provider, employee groups and other stakeholders. This input allowed SDRS to work with members of the state legislature to develop a policy that would be widely accepted. The drivers behind the recommendations from the SDRS were the low participation and savings rates in the SRP. For example, in the month prior to automatic enrollment implementation, overall employee participation in the SRP was about 20 percent, a relatively low rate given that most retirees need to have a third source of retirement income in addition to their SDRS pension benefit and Social Security.

In 2008, legislation was passed authorizing the SDRS to begin automatic enrollment in SRP and Governor M. Michael Rounds signed the bill (House Bill 1020) into law February 6, 2008. It is noteworthy that both the House and Senate passed the bill unanimously.[10] There appears to have been no opposition to the adoption of automatic enrollment by any of the stakeholders including workers, their representatives, government employers or policymakers. The legislation also included two provisions intended to eliminate any legal challenges.[11]

The new automatic enrollment provisions applied only to newly hired employees after the act became effective on July 1, 2009 and individual agencies and public employers were allowed to choose whether they would adopt the new feature.

Promoting Automatic Enrollment.

The SDRS began promoting automatic enrollment to the various government units in the South Dakota Retirement System six months before the new plan features were available. Letters and postcards were sent to appropriate unit managers announcing the passage of automatic enrollment legislation, the adoption of the policy by the SDRS and the administrative requirements for the government units that wanted to participate in the system. Each unit must approve the adoption of automatic enrollment[12] and model resolution wording and reference materials are provided by SDRS to public employers considering adoption.[13]

Movement to adopt automatic enrollment has been relatively slow. As of March 2010, 40 governmental units have moved toward or implemented the new features including some of the larger public employers. From July 1, 2009, to February 28, 2010, there were 3,532 new hires who began participating in the South Dakota retirement plan and one third of these new employees were in governmental units that had adopted the automatic enrollment policy.

According to the SDRS, this gradual adoption has been useful as the process of introducing automatic enrollment requires each unit to restructure its payroll system of each unit to allow for automatic deduction of contributions for the supplemental retirement plan. Monies withheld from pay are sent from each unit to the SDRS and SDRS then transfers the funds to Nationwide Retirement Solutions, Inc., the contracted program manager, for deposit into individual employee-owned investment accounts. While the state law does not require employers to match employee contributions, individual units can offer such financial incentives to saving if they choose.

Under the legislation, employees have a 90-day period during which they can disenroll, or "opt-out," of the plan by filing a written statement with the SDRS to suspend new contributions and to receive the return of their contributions and associated returns. There are no penalties but the repayments are taxable income to the employee, just as if the funds had not been withheld from their pay.

During the 90-day waiting period, employee contributions are maintained in a money market fund to minimize any potential loss in value. After 90 days all funds are shifted to a default investment in the SRP, if the participant has not designated an investment option. The current default investment for funds that are retained in the system is an appropriate target date or lifecycle fund. A participant with assets in the default investment can transfer their account balance to any of 11 target date funds or 15 other investment options at any time.

The initial contribution for newly hired employees is $25 per month and is withheld from the worker's paycheck and sent to the SRP. Contributions are invested into a Qualified Default Investment Alternative (QDIA), which is selected by the South Dakota Investment Officer. Currently, the investments are a money market account for investments during the first 90 days and a target date fund thereafter if the participant has not made an investment election. The QDIA meets the requirements of the U.S. Department of Labor regulations for the investment of automatic enrollment contributions. Participants can increase monthly contributions at any time up to the legal limit set by the Internal Revenue Service and can elect to have their funds invested in any option offered by the plan at any time. Finally, the employee can terminate contributions at any time.

Policy Issues and Political Debates

Testimony in support of the legislation reveals three central reasons why the South Dakota State Legislature supported automatic enrollment in the SRP: a concern about low savings rates of certain demographic groups, uncertainty surrounding the future of federal entitlements and the prospect of changes to federal rules.

When representatives of the SDRS testified to endorse the automatic enrollment legislation,[14] they reported that personal savings rates had declined, in both South Dakota and across the nation, with many employees having negative savings rates. SDRS representatives believed that the bill would encourage workers, especially younger cohorts (those age 20-39), to save more, in light of potential benefit changes to Social Security and Medicare and rising retiree health care and long term care costs.

SDRS officials also cited the success of automatic enrollment policies in the private sector and believed that new employees would not miss the portion of their paycheck set aside in an account and felt that employees needed to follow a 'pay myself first' approach to retirement. In addition to helping employees save for retirement, SDRS representatives also predicted that automatic enrollment would have no actuarial impact (i.e. little or no cost) on any SDRS retirement benefits. They also noted that the federal Pension Protection Act of 2006 and related IRS rule changes were intended to help government plans such as SDRS adopt automatic enrollment policies.

When discussing the automatic enrollment legislation, South Dakota House and Senate members[15] also highlighted the issue of low personal savings rates in South Dakota and the nation and the possibility of changes to federal programs that could dramatically affect retirement benefits by the time new employees reached retirement. Legislators stated that they were proud of the structure and fiscal health of the retirement benefits offered by SDRS and that South Dakota has one of the most sound state retirement plans in the nation. Automatic enrollment was cited as an additional component necessary in keeping this status. The legislative debate noted the diverse range of government employees covered under SDRS and lawmakers felt automatic enrollment would be an important tool to help South Dakotans save for retirement.

The Impact of Automatic Enrollment in South Dakota

While still in its early stages of implementation, it is clear that the transition to automatic enrollment is having a powerful positive impact on SRP participation rates in the 10 percent of government units that have embraced the policy during its first eight months. Prior to automatic enrollment, about 20 percent of all eligible employees participated in the SRP. In the first eight months of the new policy, 91.3 percent (1,172) of newly hired public employees whose employer adopted automatic enrollment became participants in the SRP and remained enrolled, while only 8.7 percent (102) chose to terminate their participation.[16] The average age of these new enrollees was about 38 years of age. These individuals, on average, are younger than the overall South Dakota state and local government sector workforce population that, as of 2009, had the average age of about 44 years old.[17]

Higher opt-out rates occurred in a few units in October and November 2009, apparently because those units provided the opt-out forms to new employees during their new-hire orientation. This process was subsequently altered and individuals wishing to opt-out of the SRP are now required to speak with a retirement specialist before making their final decision to opt-out of the SRP. The change in process seems to have been effective in lowering the opt-out rates.

Table 1. Effect of New Policy on Enrollments and Opt-Outs from the SRP

	New Enrollments	State Employees	Local Employees and Regents (University Employees)	Opt-Outs Received During the Month	Opt-Out %
July 2009	106	89	17	0	0.0%
August 2009	190	90	100	8	4.3%
September 2009	256	67	189	13	5.1%
October 2009	141	49	92	34	24.1%
November 2009	126	71	55	22	17.5%
December 2009	135	84	51	11	8.1%
January 2010	124	77	47	6	4.8%
February 2010	94	43	51	8	8.5%
Totals	1172	570	602	102	8.7%

Table 1 reports the number of employees who were automatically enrolled in the SRP in the first eight months of the policy and the number of individuals who processed opt-out forms during each month. During the first eight months of the policy, 570 state government employees were enrolled, with 27 state employees submitting their opt-out forms, an opt-out rate of about 5 percent. Among local government employees, 273 new hires were enrolled and 20 chose not to participate, an opt-out rate of 7 percent. It should be noted that South Dakota Board of Regents employees, included within the 'Local Employees' category in Table 1, had a relatively high opt-out rate of 17 percent (329 enrolled, 55 opt-outs), likely due to the fact that these employees were provided with opt-out forms during their new-hire orientation.

The initial analysis of the impact of automatic enrollment indicates that 91.3 percent of the individuals who were automatically enrolled into the SRP remained in the plan when the 90-day opt-out period had ended. In comparison, the governmental units that had not yet adopted automatic enrollment hired 2,360 new employees in the same eight-month period, with only 17 of these new hires having joined the SRP by February 2010. This means less than 1 percent of new employees in these units enrolled in the supplemental plan voluntarily compared to 91 percent of new employees in the governmental units that had adopted automatic enrollment. It seems clear the new policy had a major impact on the initial enrollment of new employees into the supplemental plan during the first eight months of implementation.

Conclusions and Lessons for Other States

The adoption of automatic enrollment of newly hired public employees in South Dakota into the SRP was universally welcomed and initial data indicate it will be an effective policy for increasing retirement saving by public employees. Other states considering an automatic enrollment feature for their defined contribution retirement plans would benefit from a review of the adoption process and the policies implemented by South Dakota. The following highlights some of the key aspects of the new policy and how it was developed.

1. **The staff of the South Dakota Retirement System (SDRS) worked with consultants, the plan provider, employee groups and other stakeholders to develop a policy that would be broadly acceptable.** Careful development of the automatic enrollment policy and general agreement that increased retirement savings were needed resulted in unanimous votes in both houses of the legislature to adopt automatic enrollment.

2. **The policy applies only to new employees, thus ensuring that existing employees would not see their take-home pay reduced.** This reduced the likelihood of employee groups opposing the legislation. Numerous studies and first-hand accounts indicate that actual opposition to automatic features tends to be weak or nonexistent, and the majority of employees welcome automatic features in their retirement plans.[18]

3 **Legal issues related to withholding wages without workers' permission were eliminated by the legislation, thus reducing the threat of court challenges to the new policy.**

4 **The new policy did not require any new state funds, did not affect the budgetary status of the state and was also adopted with no costs to the state retirement plan.** This no-cost policy also alleviated the concerns of policy makers and taxpayers.

5 **The required initial contribution to the plan is relatively small.** The plan administrators hope that once workers participate in the plan, they will continue to contribute to the SRP throughout their career, and increase their monthly contributions.

6 **Workers are allowed to opt-out of the SRP with contributions refunded for 90 days after they are employed.** Employees who meet with a retirement specialist and file opt-out forms will have their contributions plus associated gains or losses refunded to them. During this period, all contributions are placed in a money market fund, eliminating the possibility that employees will lose money on their contributions during this trial period.

7 **After the trial period, all funds are shifted from the money market into a target date or lifecycle fund, thus providing a diversified portfolio to individuals who do not make an investment election.** At any time, employees can change the amount of their monthly contributions, reallocate the money in their account to other investment alternatives or opt-out of the SRP.

8 **Adoption of the new policy required modification of payroll structures to allow contributions to be transferred from employee pay to the SDRS.** Given the individualized nature of the payroll systems of the state, county, municipal and other governments who participate in this system, a full-scale adoption of automatic enrollment might have placed a heavy administrative burden on the SDRS and the provider, offering the improved defined contribution retirement plan. While all governmental units were encouraged to adopt the policy when it became effective, the process requiring each unit to adopt the proposal has led to a gradual increase in participating units. This gradual adoption has given all parties time to implement the policy without being overwhelmed with payroll changes.

9 **Among the units that have implemented automatic enrollment into the SRP, the opt-out rate has been only about 8.7 percent.** This means that approximately 91 percent of those enrolled into the plan have remained in the plan at least through the initial 90-day opt-out period.

Endnotes

1 In the private sector this refers primarily to 401(k) retirement plans.

2 US Government Accountability Office. 2009. *401(k) Plans: Several Factors Can Diminish Retirement Savings, but Automatic Enrollment Shows Promise for Increasing Participation and Savings*. http://www.gao.gov/new.items/d10153t.pdf (see pgs 3 and 13).

3 Center for State and Local Government Excellence. 2010. *The Great Recession and the State and Local Government Workforce.* http://www.slge.org/vertical/Sites/{A260E1DF-5AEE-459D-84C4-876EFE1E4032}/uploads/{E06940EE-3AFB-4582-845C-BB483D567D0B}.PDF

4 This discussion is based on the material in SDRS (2008).

5 (SDRS, November 1994, revised July 2005)

6 (SDRS, November 2008)

7 (SDRS, November 2008; SDRS, 2009)

8 Until recently, vested terminated workers received 100 percent of employer contributions with interest upon leaving the system. The interest rate applied to these contributions is the 90-day Treasury Bill rate.

9 The SDRS mission statement is "To plan, implement and administer income replacement programs, and to encourage additional saving for retirement, all of which offer SDRS members and their families the resources and the opportunity to achieve financial security at retirement, death or disability by providing an outstanding, appropriate and equitable level of benefits. The Board of Trustees believes this mission is achievable with the resources available in a progressive working environment, by sound and efficient management, through superior investment performance and by exercising the fiduciary responsibility associated with the proper stewardship of member assets."

10 South Dakota Legislature. 2008. *2008 Legislative Session.* http://legis.state.sd.us/sessions/2008/

House Bill 1020 was introduced on January 8, 2008 by The Committee on Retirement Laws at the request of the SDRS. The Committee and then full South Dakota House unanimously passed the bill 5-0 and 65-0, respectively, in mid-January 2008. Later that month, the South Dakota Senate Committee on Retirement Laws and full Senate passed the bill 5-0 and 32-0, respectively.

11 First, the law provided an exception to any other provisions of state law requiring individual authorization for a payroll deduction. Second, the automatic enrollment plan must adhere to the requirements of IRS Rulings 98-30 and 2000-8.

12 (SDRS, November 2008)

The requirement that individual governmental units approve this new policy is consistent with the development of the South Dakota retirement plan. By law, all state employees and employees in the South Dakota universities were included in the SDRS; however, counties, cities, and other public entities had to make a positive decision to enter the system and once they decided to participate they could not withdraw from the SDRS.

13 One of the promotional SDRS brochures can be downloaded from: http://www.sdrs.sd.gov/files/documents/section/SRPAutoEnroll.pdf

14 South Dakota Legislature. 2008. *House Bill* 1020. http://legis.state.sd.us/sessions/2008/audio.aspx?CommitteeCode=HRE&MeetingDate=01/15/2008&BillNumber=1020

South Dakota Legislature. 2008. *House Bill* 1020. http://legis.state.sd.us/sessions/2008/audio.aspx?CommitteeCode=SRE&MeetingDate=01/25/2008&BillNumber=1020

15 South Dakota Legislature. 2008. *House Bill* 1020.
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16 Between July 2009 and February, 2010 102 of these individuals had completed forms requesting that they be removed for participating in the SRP and receive total refunds from their accounts. This is likely an underestimate of the total number of employees opting out of the plan because workers hired in January and February 2010 still had a month or two to file the opt-out forms. In addition, this does not include any individuals who chose to cease additional contributions but did not complete the opt-out forms and request refunds.

17 Miriam King, Steven Ruggles, Trent Alexander, Donna Leicach, and Matthew Sobek. *Integrated Public Use Microdata Series, Current Population Survey: Version 2.0.* [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2009.

18 Prudential. 2010. *Sixth Annual Workplace Report on Retirement Planning: The New Economic Reality and the Workplace Retirement Plan*

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