Committee on Civil Service and Labor

February 23rd, 2019

John Adler, Director of Mayor's Office of Pensions and Investments

My name is John Adler, I am director of the Mayor's Office of Pensions and Investments, and Chief Pension Investment Advisor for Mayor Bill de Blasio. I am here to testify on behalf of the de Blasio Administration regarding the private sector retirement legislation being considered today.

Mayor de Blasio appointed me to my current position in 2015. In that capacity I serve as the Mayor's representative on the boards of the New York City pension funds and the Deferred Compensation Plan. I am chair of the NYCERS board and facilitator of the Common Investment Meeting for the 5 New York City Retirement Systems. Since 2011, when I became the Retirement Security Campaign Director for SEIU, through today in my current role, a main focus of my work has been seeking to address the slow-motion retirement security crisis in this country by seeking to create retirement programs for the roughly half of the American workforce who have no retirement plan at work. I was one of the founders of the Center for Retirement Initiatives at Georgetown University; I co-convened a national Retirement Security for All Coalition in Washington; and I served on the board of the National Public Pension Coalition, which works to protect defined benefit pensions for public employees around the country. My testimony today is thus informed by my experience in the research, design and launch of programs like the one proposed here, and seeing those programs start to finally help turn the ship for the millions of workers whose current retirement plan is nothing more than: work forever.

Let me explain specifically the need for this program in the City of New York.

The challenges of maintaining a decent standard of living in retirement begin with a lack of access to viable savings programs.

40% of New Yorkers near retirement age have less than $10,000 saved for retirement. The challenges are particularly pronounced among lower-income, immigrant and minority communities, and among women.

According to the Schwartz Center for Economic Policy Analysis at the New School, out of approximately 3.5 million private sector workers in New York City, only 41% have access to an employer-sponsored retirement plan, which is down from 49% only a decade ago. The problem, therefore, is getting worse.

The Administration supports Intros. 888 and 901, which establishe a mandatory auto-enrollment payroll deduction IRA program for employees of NYC private sector employers that do not offer a retirement plan. At any time, an employer may choose to offer its own retirement plan and discontinue participation in the City plan. We estimate that over a million workers will be eligible for the program this legislation would establish.

There are no employer contributions in order to remain in compliance with federal ERISA regulations. The proposal we are considering here in NYC is very similar to programs that are already operating in California, Illinois and Oregon, where 9 million workers who did not have access to a workplace retirement plan 2 years ago now do. Programs have also passed but not yet opened in Maryland, Connecticut and New Jersey. At least 19 other states are studying or considering similar plans.

If enacted this program will help over a million New York City workers, and millions more in the future, save for their own retirements through payroll deductions on the job. This program has the potential to significantly reduce future poverty among retirees in New York City, and take an important step towards helping over a million New Yorkers maintain or improve their standard of living when they stop working.

As a 2018 report from the Pew Retirement Savings Project shows, the savings workers will achieve will have an impact far beyond the absolute dollars saved by giving workers options as they near retirement. An especially significant value add for many workers is the chance to boost lifetime retirement income by delaying taking Social Security. Every year that a worker waits to begin taking Social Security adds 8% to his or her monthly check from ages 66 – 70, and 6% from ages 62 – 66. So even if workers begin saving relatively late in their careers, if those savings allow a delay in taking Social Security even for a year or two, that will mean a substantial boost to their monthly income for the rest of their life.

In closing, the creation of this program will help many New Yorkers begin saving for their own retirement for the first time. It represents a major step forward to address this crisis by ensuring that virtually all New Yorkers can save for their retirement though payroll deductions, the most effective way to build retirement savings.

Thank you.

NEW YORK CITY
CENTRAL LABOR COUNCIL, AFL-CIO

President
VINCENT ALVAREZ

Secretary-Treasurer
JANELLA T. HINDS

Testimony of New York City Central Labor Council, AFL-CIO
Committee on Civil Service and Labor
September 23, 2019

Comprised of 1.3 million workers across 300 affiliated unions, the New York City Central Labor Council, AFL-CIO, recognizes the necessity to address retirement security. New York City and the United States are in the midst of a retirement security crisis. Retirement is a slow-moving crisis, because despite income level, most workers approaching retirement age simply do not have enough saved to retire. Research finds the median account balance for workers nationally ages 55-64 is just $15,000, and $18,000 in New York State, with approximately two-thirds of workers in the bottom half of the income distribution both at the State and federal level with nothing saved for retirement; this is not relegated to low-income people, as even those earning in the top ten percent have a median balance of just $200,000, which is meant to last for the entirety of retirement[1]. Low-to-non-existent retirement account balances will leave many from a myriad of incomes with an insufficient replacement rate in their post-work years.

Experts assert the key to sound retirement is replacing as much monthly income from working as possible with income saved in retirement; it has been described as a 'stool' with three legs: savings, Social Security, and a retirement plan. Startlingly, 65% of New Yorkers are not covered by a retirement plan, many lack any savings at all, and most will rely solely on Social Security income, approximately $1,471 per month[2]. Most people in New York City will not be able to retire, with The New School's Schwartz Center estimating as many as 825,000 in the State (41%) will experience downward mobility[3].

One impact of growing retirement insecurity is the 'sandwiching' pressure on working aged children of the elderly who have children themselves. Elderly people without adequate retirement savings may rely on their grown children for support, which in turn puts pressure on those adult workers. Adult workers with both aging parents and growing children are effectively 'squeezed,' in supporting both the generation below and above, ironically, making it harder to save for retirement themselves, and perpetuating the downward decline in standards of living.

The most effective plan to prepare for retirement is a defined benefit pension. Pensions have provided life-long incomes to workers, which contribute to the three-legged stool necessary to retire. Among union workers, 70% have a retirement plan, which is a hard-fought victory that has transformed the lives of those people[4]. Historically, the growth of collective bargaining has led to greater retirement security for the workers[5].

With this legislation, New York City has an opportunity to provide individuals a vehicle to prepare for the future and save for retirement. Int. No. 888-2018 and 901-2018 are important first steps in providing individuals in New York City a foundation to save for retirement. It is necessary to incentivize as much savings for retirement as possible, and any efforts to do so by the City should be commended.

1.Ghilarducci, Teresa, and Michael Papadopoulos. "Disparities & Erosion in New York's Workplace Retirement Coverage." Schwartz Center (SCEPA), 2018.
2."Social Security Fact Sheet." Social Secutiy Administration. SSA, August 2019. https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf.
3. Ibid, SCEPA
4. Ibid, SCEPA
5. "How Unions Help All Workers." Economic Policy Institute. Accessed September 2019. https://www.epi.org/publication/briefingpapers_bp143/.

275 Seventh Avenue, 18th Floor, New York, NY 10001 • Tel: (212) 604-9552 • Fax: (212) 604-9550
E-mail: info@nycclc.org • www.nycclc.org

NYC | HOSPITALITY ALLIANCE

Testimony of the New York City Hospitality Alliance on:

Int 888 - In relation to establishing a retirement savings program for private-sector employees.

Int 901 - In relation to establishing a retirement savings board to oversee the city's retirement savings program for private-sector employees.

The New York City Hospitality Alliance is a not-for-profit association representing restaurant and nightlife establishments in the five boroughs that would be impacted by establishing a retirement savings program for private-sector employees.

Retirement savings accounts are vital for New Yorkers and we commend the desire of City Council members to expand their availability to more working New Yorkers. While we recognize that the proposed legislation does not mandate direct funding of these accounts by employers when so many have financial constraints, we do have concerns about adding <u>another</u> administrative burden to their plate, which collectively pose significant challenges and liabilities.

As City Council deliberates this legislation, we urge you to consider the following points that have been developed based on expert feedback we've received and the experiences of our restaurant members who have or offer retirement programs to their employees:

- As drafted, this legislation may violate Employee Retirement Income Security Act (**ERISA**) because ERISA preempts all state and local governments from designing and operating retirement savings programs. In 2016, the Obama Administration issued a regulation that would have created a safe harbor to allow state and local governments from creating retirement savings programs. In 2018, under the Congressional Review Act, Congress explicitly rejected and blocked this safe harbor provision, which only reinforces the fact that under the current state of the law, the proposal for the City to design and create retirement savings plans is preempted by ERISA.

- In the restaurant and nightlife industry, a large segment of workers earn significant income from tips, which they leave with after their shift. This means that taxes from their tip income is then taken out of their weekly base paychecks. This often results in paychecks of a negative amount, or an amount too small for retirement savings to be debited from.

New York City Hospitality Alliance
65 West 55th Street, Suite 203A | New York, NY, 10019
212-582-2506 | info@thenycalliance.org | www.thenycalliance.org

- Some businesses may employ undocumented workers and therefore would be unable to provide SS or TIN numbers usually required to establish retirement savings accounts. This may also create complications if a plan is created for an individual under an incorrect identification number.

- The feedback we've received from some restaurants is that even when they offer and encourage hourly employees (which is the vast majority of their employees) to take advantage of retirement savings accounts, they rarely do, even if there is an employer match. Thus, anecdotal evidence suggests that this proposed mandate would burden employers with more administrative and paperwork requirements, while providing little adoption by their employee community.

Again, we laud the intent of this proposed legislation, but hope you consider its practicality and the issues we've raised. As you know, there are many retirement programs available to the public via private entities, or ones that could be through the City administered program contemplated by this proposal, for which the employer need not be directly involved. Because of the importance of retirement programs and the issues we've raised, perhaps employers only provide a notice to employees upon hire that outlines the programs they sponsor and/or information about the availability of retirement plans available to them in the market, in a manner that doesn't violate ERISA. Alternatively, the City could promote small business 401(k), multi-employer plans, or promote Roth IRAs for employees. This approach would help accomplish the goal of getting more New Yorkers to think about and hopefully save for retirement, while mitigating issues posed by the legislation as currently drafted.

We are happy to discuss this matter further and appreciate your consideration of our comments.

Respectfully,

Andrew Rigie
Executive Director
arigie@thenycalliance.org

THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

ALIYA ROBINSON
Senior Vice President, Retirement and Compensation Policy

September 23, 2019

New York City Council
Committee on Civil Service and Labor
City Hall Park, New York, NY 10007

RE: New York City Int. No. 0888-2018 – New York City Retirement Savings Program

Dear Chairman Miller and Members of the Committee on Civil Service and Labor:

The ERISA Industry Committee ("ERIC") is writing to submit comments regarding New York City Council Int. No. 0888-2018 ("Int. 888") to reinforce the importance of ensuring that the city-run retirement plan created by the bill conforms with the preemption protection afforded by federal law—the Employee Retirement Income Security Act of 1974 ("ERISA")—and does not impose benefit, reporting, or administrative requirements on employers sponsoring a retirement plan. Our letter builds upon comments that we submitted on August 1, 2018, when Int. 888 was initially proposed.

I. ERIC's Interest in Int. No. 0888-2018

Representing companies that voluntarily offer retirement benefits to workers and families across the country, ERIC is committed to the financial security of millions of Americans who are facing retirement or have already entered retirement. ERIC supports proposals and programs run by states and localities designed to promote and facilitate retirement saving by those who are not covered by an employer plan. However, it is critical that these programs avoid placing any burden on employers that already offer a qualified retirement plan regulated by federal ERISA law. We have concerns with Int. 888 as currently drafted, and how it overlaps and connects with federal law that already governs the administration of private-sector retirement plans. We want to work with you to ensure that your program is a success without hindering employers that voluntarily provide generous retirement benefits under federal law.

ERIC is the only national association that advocates exclusively for the nation's largest employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC member companies are leaders in every sector of the economy, with employees in every state and locality in the nation. These companies offer employee benefits to millions of workers and families across the country, and promote retirement savings, financial wellness, and health care value improvements and cost savings. ERIC advocates for public policies that support the ability of large employers to offer benefits effectively and efficiently under the federal statutory and regulatory framework of ERISA.

ERIC shares your goal of increasing retirement savings access to employees who are employed by an employer that does not provide a retirement plan. We fully understand that employers that do not provide a retirement plan are concerned about the legal risks, costs, and administrative burdens of offering and operating a plan. However, for employers that already provide a retirement plan in compliance with federal ERISA law, it is important that they be able to design plans that work effectively and efficiently based on the needs of their workforces and the industries in which they operate. The overwhelming majority of tax-qualified retirement plans sponsored by ERIC's members—employers that have more than 10,000 employees—are complex, individually designed plans that contain unique provisions reflective of individual company benefit priorities and culture. ERIC members' retirement plans generally do not utilize a one-size-fits-all approach to enrollment timeframes, eligibility criteria, auto-enrollment features, or company contribution formulas. These plans comply with ERISA and should not be subject to state and local rules regarding eligibility, reporting, and enrollment of plan participants. We strongly encourage you to revise Int. 888 to ensure that no burdens or requirements are imposed on employers that are already providing a qualified retirement plan to employees.

II. Summary of Comments

The following is a summary of ERIC's comments, which are set forth in greater detail below:

- Int. 888 should provide a complete exclusion for all *employers* that offer a retirement plan under ERISA and not base the exclusion on the definition of an "eligible employee".
- In the alternative, the definition of an "eligible employee" should be amended to conform with the employee eligibility requirements under ERISA. Such coordination includes setting the eligibility age at 21 and allowing employers to limit participation in the retirement plan to employees who do not exceed 1,000 hours of service in a year.
- The program should automatically exempt—without a reporting requirement—employers that provide a retirement plan to employees in accordance with ERISA. We are willing to work with you to provide recommendations, using current available data, that will assist the program in determining which employers already provide a retirement plan, and can base the exemption on ones that exists with respect to the OregonSaves and Illinois Secure Choice Savings programs.

III. ERIC Comments

Int. 888 should provide a complete exclusion for all *employers* that offer a retirement plan under ERISA and not base the exclusion on the definition of an "eligible employee". ERISA enables employers to tailor voluntary retirements plans that meet the needs of their workforce and sets forth rules at the federal level that employers must follow. The U.S. Department of Labor recognizes that "ERISA preempts state and local laws that: (1) mandate employee benefit structures or their administration; (2) provide alternative enforcement mechanisms; or (3) bind employers or plan fiduciaries to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself."[1] ERISA's broad preemption of state and local laws that relate to employer-sponsored employee benefit plans is intended to serve as a source of uniform administration. For employers that operate in multiple states and cities, ERISA preemption is critical to the ability to provide uniform and consistent benefits across an employer's workforce. Therefore, ERIC recommends that Int. 888 provide a complete exclusion for employers operating an ERISA-covered plan.

The following language was used to create the Illinois Secure Choice Savings program (emphasis added):

> "Employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in Illinois, whether for profit or not for profit, that (i) has at no time during the previous calendar year employed fewer than 25 employees in the State, (ii) has been in business at least 2 years, and (iii) *has not offered a qualified retirement plan, including, but not limited to, a plan qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code of 1986 in the preceding 2 years.*[2]

ERIC recommends that Int. 888 be amended to include similar language that completely exempts employers that offer a retirement plan under ERISA.

In the alternative, the definition of an "eligible employee" should be amended to conform with the employee eligibility requirements under ERISA. Retirement plan eligibility requirements are a clear area of core ERISA concern. ERISA section 202(a) requires an employer to not restrict eligibility for the retirement plan beyond one year of service (1,000 hours in a year) and attainment of age 21. Within this framework, each employer determines eligibility criteria based on the unique culture of the company and the market practices within the

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[1] 80 Fed. Reg., at 72007, citing New York State Conference of Blue Cross & Blue Shield Plans v. Travelers, 514 U.S. 645, 658 (1995); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 142 (1990); Egelhoff v. Egelhoff, 532 U.S. 141, 148 (2001); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 14 (1987).
[2] Illinois Secure Choice Savings Program Act (Public Act 098-1150).

employer's industry or region. In many instances, eligibility to enroll in a retirement plan will coincide with the ability to receive employer contributions to the retirement plan.

Int. 888 defines "eligible employee" as anyone 18 years of age or older who is employed full or part-time by an employer that has not been offered to participate in a retirement plan. Such a requirement would not only circumvent employee benefit structures that follow ERISA but, by binding employers to particular plan features, would function to regulate ERISA plans. This measure conflicts with the provisions of ERISA that allow employers to exclude employees from the employer's retirement plan if the employee is less than age 21 or works less than 1,000 hours in a year. To ensure that employers that currently sponsor a tax-qualified retirement plan subject to ERISA are not subject to different and potentially conflicting rules in different states and cities, and to ensure that the New York City proposal does not violate federal law, we request that the New York City Council specifically exclude employers that sponsor plans with eligibility conditions that comply with ERISA from the requirement to facilitate the city's plan.

If Int. 888 passes as is, confusion will ensue on whether employers that sponsor a tax-qualified retirement plan are able to receive an exemption if they limit participation until attainment of age 21. In addition, some employers that sponsor a retirement plan will limit immediate eligibility to workers who have not satisfied an hours of service requirement (seasonal or temporary); similarly, plans may exclude collectively bargained employees unless their bargaining unit negotiates for their participation in the plan. A plan sponsor of a federally regulated retirement plan should not be forced to alter their plan to increase coverage to other groups of employees (i.e. temporary or seasonal workers who work less than 1,000 a year or collectively bargained employees whose bargaining unit does not bargain for participation) if it is not a market practice to provide such a benefit to a specific group. Similarly, plan sponsors already offering a federally regulated retirement plan should not be forced to auto-enroll employees into a city or state-run plan with the compliance and cost burdens that would impose.

ERIC requests that Int. 888 be amended such that the program automatically exempts—without a reporting requirement—employers that provide a retirement plan to employees in accordance with ERISA. Several state jurisdictions have attempted to implement rules that require an employer that provides a retirement plan to report to the state that such a plan is provided to employees, or apply for an exemption from the state-run plan. We believe these requirements are a clear violation of ERISA preemption principles and have objected to these program rules. In fact, we brought a federal lawsuit on behalf of ERIC member companies in 2017 against the Oregon Retirement Savings Board over its reporting requirement and reached a favorable settlement that relieves ERIC member company employers from these reporting requirements. In 2019 we entered into a Memorandum of Understanding with the Illinois Secure Choice Program establishing a similar exemption for ERIC member companies from its employer reporting requirements. We are willing to work with you to craft exemptions and to provide recommendations, using current available data, that will assist the program in determining which employers already provide a retirement plan.

IV. Conclusion

ERIC appreciates the opportunity to provide comments on your proposal and welcomes future discussions on this matter. If you have any questions concerning our comments, or if we can be of further assistance, please contact me at (202) 627-1930 or arobinson@eric.org.

Sincerely,

Aliya Robinson

Aliya Robinson
Senior Vice President, Retirement and Compensation Policy

TESTIMONY

Testimony of Michele Evermore
National Employment Law Project

Establishing a retirement savings program for private sector employees

Hearing before New York City Council

Committee on Civil Service and Labor

September 23, 2019

Michele Evermore
Senior Researcher and Policy Analyst

National Employment Law Project
75 Maiden Lane, Suite 601
New York, NY 10038

(202)640-6515

mevermore@nelp.org

I would like to thank Committee Chair Miller and the members of this committee for the opportunity to appear today to support legislation to improve access to retirement security for workers in New York City. A quiet crisis is brewing. Retirement security involves many issues that the public at large find intimidating to talk about, much less follow politically. This area involves complex financial instruments, conversations about investments and returns, dozens of different kinds of fees, and uncertainty. People may still recall pension raids of private sector plans in the past, or the devastating bankruptcies at Enron and WorldCom in the early 2000's. It is difficult for people to feel like they have any power to change things. So, for the past few decades, the promise of a secure retirement has slipped away without much fanfare. However, as boomers and Generation X move toward their senior years with little to no cushion, this issue will become a public policy crisis that we are not in a position to address.

I support this legislation for three reasons – it creates an easy avenue to help workers who are currently not participating to have some meaningful involvement in developing a retirement nest egg, it will improve workers' confidence in the system and their ability to invest, and it will begin to help level the playing field between those who are currently benefiting from retirement incentives and those who are not.

I am confident that many of my colleagues will address the quite appalling statistics relating to lack of access to qualified retirement plans and low participation rates in those programs. Still, it is worth raising the fact that the racial wealth gap is real, and any policy levers we have available to address it should be employed immediately. According to a report that Dr. Nari Rhee developed for the National Institute for Retirement Security, "Only 54 percent of Black and Asian employees and 38 percent of Latino employees age 25-64 work for an employer that sponsors a retirement plan, compared to 62 percent of white employees."[1] The racial wealth gap – perhaps more of a chasm – has increased 33 percent between 1983 and 2016 and while median wealth for white families is $171,000, the average for black families is around a tenth of that at $17,600.[2] Meanwhile, if one were to combine tax incentives for retirement in the U.S. it would be the top tax expenditure. Members of the Council, our retirement policy is part and parcel of our nation's shameful legacy of systemic racism and it is up to us to start to bridge that gap at every possible turn.

The first step in addressing the retirement security crisis is adding a new generation of savers. Workers are increasingly disillusioned with their retirement prospects and the utility of aiming for something better. State and municipal auto-IRAs are one bright spot in an otherwise gloomy retirement climate. If savers' introduction to saving is something like the savings plans that other states have begun to implement, it could start to shift the world of possibilities dramatically. Oregon Saves, for example, has already enrolled tens of thousands of workers contributing on average $110 per month, adding about 2,000 new employees per month. The default investment is a no-guesswork lifecycle fund that charges 100 basis points, or 1 percent in fees, but workers can also select a lower-risk fund or a fund that is pegged to the S&P 500. Not surprisingly, because these are currently low-dollar accounts, participants are largely risk averse and the bulk of the funds has been allocated to the stable value option. As is the case for other auto-enrollment programs, between one-fourth and one-third of workers opt out.[3] This tells me that workers are using this opportunity to play an active role in their account management.

We should also discuss some of the arguments against these kinds of programs. A common objection is that workers do not need the government intervening in their retirement. They can always go out and buy a product off the shelf anytime they'd like. But as I and others have pointed out, they do not. According to the Government Accountability Office, 48 percent of workers who have a head of household over 55 have no retirement savings in 2016.[4] That number did not factor in workers who had access to defined benefit (DB) plans, but many workers who would count as having a DB plan may be in a frozen plan, or may not have many years in a past DB. A report from the New School finds that the median account balance for workers age 55-64 is only enough to provide for $300 per month in retirement savings.[5] Clearly, this is a policy failure. There are a number of reasons that workers do not buy off-the-shelf retirement products beside the obviously steep $1,000 initial buy-in required for most of these products.

An often-cited study when examining non-participation in retirement saving is the Stanford Jam Experiment. The original experiment in 1995 found that when presented with a limited number of choices of jam samples, customers chose to purchase a jar of jam far more often than those who were provided with a large array of choices.[6] This experiment has been replicated over time with similar results. Barry Schwarz wrote a book about this in 2004 called the *Paradox of Choice*. When people are overwhelmed with too many variables, decision paralysis sets in and they become unable to make a choice. This applies to our retirement problem. Not only does opening an IRA in the open market require a large up-front investment, but presents workers with unlimited providers, investment strategies, and fee structures.

This is just one limitation of the current system. Fundamentally, savings account systems subvert quite a bit about human psychology. It is difficult for us to weigh our needs in the distant future with today's more pressing needs. Inertia is also a major factor. People tend not to find time to enroll in retirement plans unless automatic enrollment is implemented. One Vanguard study showed an increase from 47 percent participation before auto-enrollment to 93 percent after an automatic contribution was implemented.[7] Finally, learning about plan fees can involve a level of detective work that people who have other full-time jobs and families may not have the time to invest. According to the SEC, an additional 1 percent paid in fees on a $100,000 investment can cost the investor $28,000 over 20 years.[8]

Add all that complexity into the fact that massive scandals in recent decades may be eroding faith in random entities, and it becomes clear that a simple opt-out state or municipal plan with a trustworthy and publicly accountable board lifts many hurdles to saving for retirement. Auto-enrollment overcomes participation inertia, a competent board can make sure that investment options are good low-fee choices and can help to clear up decision paralysis, and the involvement of accountable public servants can help to overcome cynicism about the legitimacy of the investment.

I also want to counter the notion I am hearing that these plans are not, in fact, good for underpaid workers because they would be better off paying off high-interest debts. That may or may not be true, but given the opt-out rate is a generally over 25 percent, workers who need the money immediately do have access and are taking advantage of opt-out provisions. It is also important to remember that while short-term debt may be high interest, it may be a perfectly legitimate decision for a worker to come up with a short-term time frame to pay off any high-interest debt while setting aside funds early in their career to be able take advantage of long-term compounding interest.

Finally, I want to make clear that this is not a substitute for a bold retirement security agenda. Nothing about these plans can or should stifle any other legislative or organizing effort to improve accessibility to other defined benefit or defined contribution plans, nor would this ever replace other important social insurance systems such as Social Security. That does not mean this is not a critical tool to help level the playing field in accessing IRA plans. It is important to remember that while it will be the case that many lower-income workers will find it necessary to opt out of this program, publicizing the availability of the Saver's Credit – a federal tax credit available to workers with limited earnings – during its rollout could help low-income workers who participate to see more of an economic benefit from participation. While the current retirement savings system is skewed to higher-income workers, this publicly run program can begin to address this massive inequity.

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[1] https://www.giaging.org/documents/NIRS_Report_12-10-13.pdf

[2] https://www.theatlantic.com/family/archive/2019/07/the-wealth-gap-taints-americas-success-stories/593719/

[3] https://www.oregon.gov/treasury/news-data/Documents/News-and-Data-Treasury-News-and-Reports/2018-OregonSaves-Annual-Report-FINAL.pdf

[4] https://www.gao.gov/products/GAO-19-442R

[5] https://www.economicpolicyresearch.org/images/docs/research/retirement_security/Account_Balances_adjusted_appendix_tables.pdf

[6] https://www.researchgate.net/publication/12189991_When_Choice_is_Demotivating_Can_One_Desire_Too_Much_of_a_Good_Thing

[7] https://institutional.vanguard.com/iam/pdf/CIRAE.pdf

[8] https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf

FOR THE RECORD

Testimony of CWA District 1 at 9/23/19 City Council Hearing on Private Sector Retirement Bills

Submitted on behalf of:
Dennis Trainor, Vice President of CWA District One
Robert Master, Assistant to the Vice President of CWA District One
Hae-Lin Choi, Director for Politics and Legislation, NYS, CWA District One

Good morning, I want to start by thanking Chair Miller and all members of the Labor Committee for holding this hearing and for inviting us to testify. My name is Hae-Lin Choi, I am the New York State Political Director of Communications Workers of America, District 1 and I am pleased to offer this testimony on behalf of CWA today. CWA District 1 represents more than 145,000 workers belonging to nearly 200 CWA local unions in New York, New Jersey, New England, and eastern Canada. Our members work in telecommunications, health care, higher education, manufacturing, broadcast and cable television, commercial printing and newspapers, state, local, and county government. Nationally, CWA represents over 500,000 workers in these industries; in New York City we represent about 35,000 members.

CWA District 1 fully supports the proposed legislation to create a New York City – sponsored private sector retirement plan for those workers who do not have access to a plan at their workplace. The overwhelming majority of our members have retirement plans on the job, either defined benefit plans or 401(K)-type plans with a collectively bargained employer match.

We recognize that the plan the City Council is considering here today is neither a defined benefit plan nor a defined contribution plan with an employer match. In an ideal world, all workers would have a defined benefit plan as part of the three-legged stool of retirement yore: Social Security, a pension, and personal savings. But we recognize that today that vision has all but vanished for most workers, with the exception of most workers in unionized workplaces. For many if not most workers, the only leg of that stool they can still rely on is Social Security (which we believe should be strengthened by eliminating or at least increasing the cap on taxable wages, but that's a matter for a different day).

So if most of our members already have workplace retirement plans, why are we here today to testify in favor of these bills? The reason is that we are not just concerned about our current membership, but about all workers, including the future members we will organize in the future. Allow me to explain.

The job of unions is to improve the wages and working conditions of workers. We support the city's initiatives to raise the minimum wage, provide for paid sick days, require fair scheduling, and now, a basic retirement plan. It is likely that these laws will have a very limited direct impact on our members. What they do is raise the floor in all these areas, so that our union and other unions can negotiate above and beyond these minimums to improve the wages and working conditions of our members. And if non-union workers already earn $15 an hour, receive 5 sick days and have a payroll deduction IRA, then CWA and other unions can negotiate for higher wages, more sick days and paid personal days, and a better retirement plan that includes employer contributions for those workers when they join the union. The result is that all workers benefit, union and non-union, from these City efforts to raise the floor on wages and working conditions.

At a time when the federal government is doing everything in its power to retreat from protections for workers, the environment, consumers, housing, and more, which have taken decades of struggle to achieve, New York City is leading on restoring and strengthening the social contract for the people of our city. This effort to enable everyone in New York City to have a basic retirement plan is part and parcel of that effort.

For these reasons, on behalf of CWA District 1 I urge the Council to approve the proposed legislation.

Thank you for your time and attention.

THE NEW SCHOOL
SCEPA

New York City Council Committee on Civil Service and Labor

Testimony - Rick McGahey

Senior Fellow, The New School's Schwartz Center for Economic Policy Center

September 23, 2019

Chairman Miller and fellow committee members, thank you for the opportunity to address the Committee on the topic of how to ensure New Yorkers' retirement security. I'd also like to thank the Chairman and Council Member Kallos for their leadership on this important issue.

I'm a Ph.D. economist and former assistant secretary of labor in charge of regulating ERISA under President Clinton. I join you today representing the Schwartz Center for Economic Policy Analysis (SCEPA) based in The New School's Economics Department. Under the direction of economist Professor Teresa Ghilarducci, SCEPA's Retirement Equity Lab (ReLab) documents the oncoming retirement crisis here and across the country.

Summary

ReLab studies retirement security across the nation but also in New York State and within the five boroughs. The data is clear: retirement plan coverage in New York City is low. Just 35 percent of workers in New York City participate in a work-place retirement plan. This is the lowest rate recorded for the city since the U.S. Census Bureau began tracking coverage in 1980. Disparities in access by race and class persist. Only 33 percent of black workers, 27 percent of Asian, and 26 percent of Hispanic workers are covered. While no income group is fully covered, just 25 percent of workers in the bottom half of the income distribution have a retirement plan.

If nothing is done to address the issue, by 2026, as many as 825,000 middle class workers in New York State (half of which live in the city) nearing retirement today could be at risk of poverty when they retire.

In the absence of necessary federal action, states and cities are stepping in to provide coverage to their residents through the creation of auto-IRAs for private sector workers. ReLab estimates that a city-administered IRA through the "Savings Access New York" proposal would provide coverage to 2.8 million city workers that today have none.

The Retirement Crisis in New York City

Latest numbers from 2017 show only 35 percent of full-time workers have work-based retirement coverage, down from 36 percent in 2015. This is the lowest rate recorded for the city since the U.S. Census Bureau began tracking coverage in 1980. The rate is 5 percentage points lower than the national average and 7 points lower than the rest of New York State. Not only is coverage low, it is declining and has been steadily declining for several decades now.

Small employers, declining unionization, and a younger than average workforce all are reasons why New York City employers are behind the region and nation.

Even the most privileged members of our city have shrinking and relatively low coverage. People in the top 10 percent of the income distribution saw a drop in coverage from 42 percent in 2015 to 40 percent in 2017. In the U.S., the drop in coverage for this group went from 60 percent coverage to 50 percent coverage. Workers in New York City in the bottom half of the income distribution saw a slight increase in coverage from the very low rate of 26 percent in 2015 to 27 percent in 2017. In the U.S., the drop in coverage for this group was from 33 percent coverage to 29 percent in 2017.

And when you break down the coverage rate, you find disparities continue to exist based on race and income. For the city's black workers, the rate is 33 percent, for Asian and Hispanic workers it is 27 and 26 percent, respectively. See our report "Disparities and Erosion in New York's Workplace Retirement Coverage" from December 2018. [1]

The severity of the situation is reflected in low retirement savings figures. The median retirement balance for workers in New York State ages 55 to 64 is just $18,000 (city residents make up half the state's population). This $18,000 is not annual income, but wealth that must be spread across all of one's retired life. And most workers earning in the bottom half have nothing: zero saved for retirement. And to reiterate, these are workers ages 55-64, meaning they have almost no time left to accumulate savings before reaching typical retirement ages. Even the top 10 percent have little saved: the median for them is $225,000. This can maintain their living standard for perhaps 3 or 4 years after retiring, again not nearly enough.

This leaves workers nearing retirement with a difficult choice. They can work longer, delaying retirement and try to save up enough to retire later. This won't work for most people, especially those in declining health, or those living paycheck to paycheck. The other choice is to retire and accept large declines in living standard, what we call downward mobility.

The Schwartz Center has conducted simulations to estimate the retirement income of workers currently between the ages of 55-64. We calculated what their incomes would be when they retire over the next ten years. We find that as many as 825,000 older workers and their spouses in New York State who now earn twice the poverty level will be poor or near poor when they retire at 62. Because over half of them live in New York City, over 400,000 older workers and their spouses in New York City who earn more than the poverty level now will be poor or near poor when they retire at 62.

This represents massive downward mobility, which will cause human misery and economic damage. Downward mobility will not only cause personal costs to individuals and families, but will cause the loss of city jobs and add to social spending. If older people are deprived of the ability to retire, younger workers will face greater competition for jobs, fewer avenues for promotion.

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[1] Ghilarducci, T. and Papadopoulos, M. (2018) "Disparities and Erosion in New York's Workplace Retirement Coverage" Schwartz Center for Economic Policy Analysis, The New School for Social Research, Report Series.

A First Step to the Solution

Policymakers need to act now to alleviate the wide-ranging effects of our impending retirement crisis. While the nature of the retirement crisis demands comprehensive reform at the federal level, city and state residents can be helped immediately through city- and state-level auto-IRAs for private sector workers, a proposal included in the legislation discussed today.

Today's proposal follows a model showing early signs of success in states that have taken the lead on reform. These plans allow employees to save through automatic deductions from their paycheck. Oregon's auto-IRA has enrolled over 100,000 workers in just 2 years and saved $25 million. Only open since January of 2019, Illinois' program has enrolled more than 24,000 workers, helping them save more than $5 million.

The proposal under discussion today will create a city-level auto-IRA program that will require employers with more than 5 employees to automatically deduct a percentage of their workers' pay and forward it to city-facilitated, not-for-profit IRAs. Such accounts will be individually owned and professionally managed, and administered by an independent board headed by city-appointed trustees. While employers are required to participate, employees would have the right to change their contribution rates or opt-out of the program.

The proposal to enact auto-IRAs in New York City continues a trend in state- and city-level retirement reform efforts. In the absence of action at the federal level, 43 states (and the city of Seattle) have proposed various mechanisms to expand their residents' access to retirement coverage. New York State is one of 11 that have enacted reform.

While the rapid-fire pace of reform efforts at the state and local level is a reflection of both the need for retirement coverage and the political will to act, some plans are better than others. The New York State Secure Choice Savings Program, while a worthy step in the right direction, doesn't go far enough to make real change for our residents.

The state program leaves out the key feature that makes these state- and city-level programs a success: a mandate. The Oregon and California plans require employers to sign their employees up for the program. The New York State auto-IRA plan is the program amongst the states that have passed reform that is voluntary, allowing employers to choose whether or not to offer their employees the option to participate in the state savings program. This is basically the system we have now, and it doesn't work.

This detail makes all the difference. Without requiring employers to participate, we cannot guarantee our workers a way to save. Including a requirement that employers participate in an auto-IRA program for the city will extend basic retirement plan coverage to approximately 95 percent of New York City's workers, those in companies with 5 or more workers. This will guarantee retirement coverage for 2.8 million city workers that today have none.

The mechanics for constructing a retirement income platform are well known; what we need now is leadership to get the job done. Luckily, this is where New York excels. By passing this plan in the City Council, we'll be following a long legacy of advancing much-needed social policy through city- and state-level innovation, going back to 1930 when New York Governor Franklin Roosevelt became the first public official in the United States to commit to creating unemployment insurance.

Auto-IRAs are a step in the right direction to ensure all city workers have retirement coverage, regardless of where they work. Significantly, the city's adoption of such a proposal will add our political and symbolic weight to the critical mass of states and municipalities advancing the need for universal coverage for everyone in all 50 states.

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Testimony of Allison E. Wielobob
on behalf of the
American Retirement Association

Committee on Civil Service and Labor
New York City Council

September 23, 2019

Thank you, Chairman Miller and other members of the Civil Service and Labor Committee, for the opportunity to speak with you about Int. No. 0888-2018, the proposed required automatic enrollment arrangement for employees of private New York City employers that do not sponsor a private retirement plan (the "Proposal"). My name is Allison Wielobob, and I serve as General Counsel of the American Retirement Association ("ARA").

Today, I speak on behalf of the ARA and its five underlying affiliate organizations, representing the full spectrum of America's private retirement system: the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the ASPPA College of Pension Actuaries ("ACOPA"), the Plan Sponsor Council of America ("PSCA"). Together, we are a national organization of more than 26,000 members who provide consulting and administrative services to American workers, savers and sponsors of retirement plans. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys focused on working with the sponsors of qualified retirement plans. ARA's diverse membership is united in their dedication to America's private employer-sponsored retirement system.

The ARA strongly supports the goal of helping the citizens of New York City strengthen their retirement security by facilitating well-designed workplace-based retirement plans. We have consistently and actively supported proposals to expand retirement plan coverage in the private workforce. It is our long-held belief that automatic enrollment is an important and effective tool for increasing savings rates and employee participation. Moreover, we have also supported proposals and programs run by states and localities designed to promote and facilitate retirement saving by those who are not covered by an employer plan. With this in mind, our concerns regarding the proposal fall into two general categories.

- **The Proposal should automatically exempt employers that sponsor an ERISA-covered retirement than base applicability on the meaning of "eligible employee." Additionally, the program should not require covered employers to**

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use the City's retirement savings options. Employers should be allowed to select a payroll deduction IRA or qualified plan from the marketplace.

The Proposal would place undue complexity and burdens on employers by imposing a set of rules that parallel the extensive and effective set of federal rules that apply to workplace retirement plans. The Employee Retirement Security Act of 1974 ("ERISA") enables employers to structure retirement plans that meet the needs of their workforce and provides comprehensive governance at the federal level. ERISA includes a fiduciary standard that is recognized as "the highest known to the law." For 45 years, ERISA has ensured that fiduciaries are acting in the best interest of the fund, and employees receive their benefits.

In enacting ERISA, Congress recognized the potential for differing state standards and provided for preemption conflicting state and local laws. That is, Congress intended for ERISA to serve as a source of uniform administration of employee benefit plans nationwide. And the U.S. Supreme Court has recognized that ERISA preempts state and local laws that: (1) mandate employee benefit structures or their administration; (2) provide alternative enforcement mechanisms; or (3) bind employers or plan fiduciaries to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself. The Court has said that Congressional intent to occupy the field supersedes the operation of state law on the same subject matter without regard to whether actual conflict exists.

We are concerned that the Proposal overlaps with ERISA's comprehensive governance of private-sector retirement plans. Similar proposals in several states – including Oregon, California, Illinois, Maryland, and New Jersey exempt employers that offer an ERISA covered plan to their employees. **The ARA recommends** that the Proposal be amended to automatically exempt employers that provide an ERISA-covered retirement plan rather than base applicability on the meaning of "eligible employee." It is critical that additional burden not be placed on employers that already offer a qualified retirement plan regulated by federal law.

The ARA recognizes that far too many Americans lack access to a retirement plan at work. But this is not due to a lack of options in the marketplace. Today, employers may choose from among many retirement plans available at a reasonable cost, including straightforward payroll deduction IRA programs. The problem is that many business owners are understandably focused on running their businesses to focus on offering a retirement plan to their employees. The ARA believes that any requirements placed on employers should be designed to minimize the burden on the employer while promoting the desired policy outcome of increasing the availability of workplace savings arrangements.

Additionally, **ARA recommends** that employers which do not presently sponsor a retirement plan should not be required to use the City's retirement savings program. Rather, we suggest

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that the Proposal permit employers to choose a payroll deduction IRA or qualified plan from the marketplace.

ARA's second area of concern is the Proposal's eligibility conditions, that is, the requirement that employees age 18 years and older be covered by the plan.

- **The Proposal should not apply to employers that sponsor plans with eligibility conditions that comply with ERISA.**

Under the proposal, employees who are 18 years of age or older and employed full or part-time would be "eligible employees." ERISA, on the other hand, precludes an employer from restricting eligibility for the retirement plan beyond one year of service (1,000 hours in a year) and attainment of age 21. In other words, under ERISA, employers may wait until age 21 to allow an employee to enroll in the employer retirement plan and limit participation in the plan to employees who work for the employer for more than 1,000 hours in a year. Defining eligible employee with an age requirement of 18 years old is in direct contradiction of ERISA's eligibility rules.

The Proposal would cause confusion about whether employers that sponsor a tax-qualified retirement plan are subject to the Proposal's requirements when their ERISA plan limits participation until attainment of age 21. To ensure that the Proposal does not violate federal law, employers that sponsor plans with eligibility conditions that comply with ERISA should be exempt from the requirement to facilitate the city's plan. That is, they should not be subject to any additional – and different -- state and local rules.

Thank you for allowing me to speak on this issue and I am happy to answer any questions that you may have.

Comments on New York City's "Savings Access New York Retirement Program."

Statement of

Alicia H. Munnell and Caroline V. Crawford
Center for Retirement Research at Boston College

Civil Service and Labor Committee
New York City Council
September 23, 2019

Thank you for inviting us to testify on New York City's proposed legislation to establish a retirement savings program for private sector employees. The legislation addresses a serious problem: approximately half of private sector employees in the United States do not have access to an employer-sponsored retirement plan at their current job. This statistic is concerning because Social Security alone will not allow workers to maintain their standard of living once they retire, and people rarely save outside of employer plans.

Ideally, this "coverage gap" should be addressed by Congress with national legislation, but, in the absence of federal action, states and, in this case, a large city have taken the initiative by introducing their own auto-IRA programs. Perhaps these initiatives will ultimately lead to a federal program. In the meantime, the experience of early adopters can help later adopters with key design considerations.

The Center for Retirement Research at Boston College (CRR) has been actively involved with auto-IRA proposals in Oregon, Connecticut, Illinois, and Seattle. At this time, OregonSaves – the first auto-IRA program launched – has been up and running for just under two years.[1] Our hope is that the lessons learned from the early experience of OregonSaves can help inform the development and implementation of auto-IRAs elsewhere.

As written, the New York City proposal (Int. No. 888) would require all employers with more than 10 employees that have been in business for two years to auto-enroll their employees in a Roth IRA with a contribution rate of 3 percent. In our experience, three criteria are essential to the success of any auto-IRA program:

1) ensure employer participation by enforcing an employer mandate;

2) minimize opt-out of employees; and

3) establish a default contribution rate that generates sufficient revenues to the sponsor and the administrator and builds meaningful account balances for the workers.

Ensure Employer Participation

Employer participation is critical to both the financial feasibility and employee coverage of an auto-IRA program. A mandate is absolutely necessary to get employers to participate. Prior national initiatives without a mandate – such as the SIMPLE or the U.S. Treasury's myRA

[1] In July 2017 OregonSaves initiated its pilot study, with state-wide rollout to employers with 100 employees or more beginning October 2017.

starter account – have not moved the needle in terms of coverage. In addition, our view is that Washington State's voluntary retirement marketplace will have little impact on coverage, and to date no data contradict that assumption. New York City's approach of imposing an employer mandate is a necessary step to ensure a program's success.

Even with an employer mandate, as of August 2019, only 55 percent of eligible Oregon employers have signed up for the program, and of those that have registered, about half have begun deducting employee payrolls (see Exhibit 1). Exhibit 2 outlines the steps required of a participating employer to enroll employees, and the timeline observed in OregonSaves to date.

Interestingly, this level of employer participation occurred without any explicit penalty for non-compliance, since Oregon did not specify a penalty with the rollout of its program. The state does plan to introduce a $100 fee per employee in 2020 (with a $5,000 cap). Other states rolling out auto-IRA programs are imposing penalties from the start. Illinois has a penalty of $250-$500 per employee per calendar year (or portion of) during which the employer is not enrolled in the program. California has a penalty of $750 per employee beginning in 2020 for employers with 100+ employees, 2021 for employers with 50+ employees, and 2022 for employers with 5+ employees.

As written, New York City's proposal appears to include two explicit enforcement mechanisms. The first pertains to non-compliance in terms of enrolling employees. After employers are informed of the date by which their employees must be enrolled and deducted funds remitted, the employer will face a penalty of $250 per employee per "violation." Each two week period of non-compliance constitutes a separate violation. The second penalty applies to the employer's retention of records. Failure to retain annual records involves a penalty of $100 per employee, and preventing agency access to records involves a penalty of $1,000 for each violation.

While it is too soon to know from the current auto-IRAs programs how specific penalties affect employer compliance, the evidence from Oregon is that some penalty is necessary to keep employers moving the process along.

Minimize Opt-out of Employees

Once employers sign up, the next challenge is to keep employees, who have been auto-enrolled, in the program so that they can accumulate meaningful retirement savings. The question is what level of participation New York City should expect. Until recently, estimates of participation came from: 1) online experiments (using surveys) with uncovered workers; 2) 401(k) participant behavior; and 3) worker behavior in response to automatic enrollment programs in the United Kingdom. Synthesizing the results suggest that roughly 30 percent of workers would opt out.

Now we also have early data from California and Oregon. The reports show that, while more employees opt out compared to auto-enrollment observed in 401(k)s, the majority of workers remain in the program. As of June 2019, California's pilot study (launched November 2018) has demonstrated a 20-percent opt-out rate.[2] While Oregon's opt-out rate for the pilot and early employers (who each had over 100 employees) was similarly around 20 percent, this rate increased to approximately 40 percent when the program was rolled out to mid-sized employers.

Importantly, calculating the opt-out rate has been problematic because of uncertainty about who should count as an eligible employee. Due to high mobility and data quality issues, many employees are either inactive by the time they receive their invitation to enroll, do not show up on employer payroll feeds, or are not participating for some unknown reason. In addition to employee opt-out rates, employer compliance issues – i.e., an employer that signs up for the program but does not register employee payrolls – deflate participation levels. Once the Oregon and California programs mature, it will be easier to predict what the plan administrator and State can do to limit employee opt-out as well as employer compliance.

One final note on the relationship between opt-out rates and plan design. First, 401(k) participant behavior, experimental evidence, data from NEST in the United Kingdom, and Oregon's preliminary results suggest that a higher default contribution rate – a recommendation discussed below – would not substantially increase the opt-out rate.[3] Second, the experience of Oregon has shown that a well-designed communications campaign can encourage workers not to opt out. Best practices for communications suggest that the content should be simple, concrete, and use narratives and storytelling if possible.

[2] CalSavers Retirement Savings Program (2019).
[3] Cribb and Emmerson (2019).

Establish an Adequate Default Contribution Rate

The third consideration is establishing a default employee contribution rate that not only generates sufficient revenue to make the program financially feasible but also builds meaningful account balances for participating employees.

To be successful, an auto-IRA program must attract a private sector provider and not create undue risks to the government sponsor. When evaluating these dual goals, the CRR typically uses two metrics. The first metric is the time it takes the program to cover its operating costs for the administrator and the sponsor – i.e., to become "cash-flow positive." The second metric is the time it takes for the program to become profitable to the administrator and cost-neutral to the sponsor – i.e., to become "net positive." This second metric considers both the start-up costs of the program and the initial shortfalls from failing to cover operating costs.

Both metrics are directly impacted by the default contribution rate established by the sponsor. Employee accounts grow each year by employee contributions and investment returns on assets. The contribution amount is determined by the default contribution rate set by the program and the participant's monthly earnings. Program revenue is then generated from a fee charged to employee account balances – generally equal to a percentage of assets under management.[4] The higher the contribution rate, the higher the balances, and the greater the revenues.

OregonSaves today uses a 5-percent default contribution rate, with annual auto-escalation to 10 percent.[5] In the 2016 feasibility study performed by the CRR for OregonSaves, the analysis demonstrated that the program would be financially vulnerable if contribution rates were below 5 percent.[6] For example, a fixed default contribution rate of 3 percent (relative to 5 percent with auto-escalation) would increase the number of years for the program to become cash flow positive by three years, and net positive by seven years (see Exhibit 3).[7] The projections also showed that by Year 15 of the program, projected revenues with a fixed default contribution rate of 3 percent would be only half that generated by a rate of 5 percent with auto-escalation. Importantly, these 2016 projections should be taken as conservative estimates. As

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[4] Other state programs have set a single fee, typically between 75 and 100 basis points, on assets under management.
[5] Illinois Secure Choice uses a flat 5-percent contribution rate with no auto-escalation.
[6] Center for Retirement Research at Boston College (2016).
[7] These OregonSaves estimates assume a fee of 100 basis points for consistency with New York City's current proposed fee structure.

discussed, actual experience in Oregon to date has shown that employer roll-out has been slower than expected, suggesting that financial target dates would be delayed even further.

The default contribution rate is also crucial for ensuring that employees accumulate meaningful balances. Research has demonstrated that employees tend to stick with program defaults – including the default contribution rate. Indeed, as of November 2018, 93 percent of contributing participants in OregonSaves had not changed their rate from the default.[8] Thus, the rate set by the program tends to be the rate at which employees continue to save, and therefore has a significant impact on ultimate employee accumulations. Exhibit 4 shows the degree to which average account balances can vary across various default contribution rates.

One concern with implementing higher contribution rates has been its impact on employee opt-out. However, in a study comparing workers auto-enrolled in 401(k) plans at a 3-percent versus a 6-percent contribution rate, researchers found no significant difference in the opt-out rate between the two groups.[9] The research suggests that a default contribution rate of 10 percent or higher is required to induce large increases in opt-out.[10] Thus, a default contribution rate of 5 or 6 percent would not adversely affect participation and would greatly increase the program's ability to attract a private sector administrator and to cover the sponsor's costs.

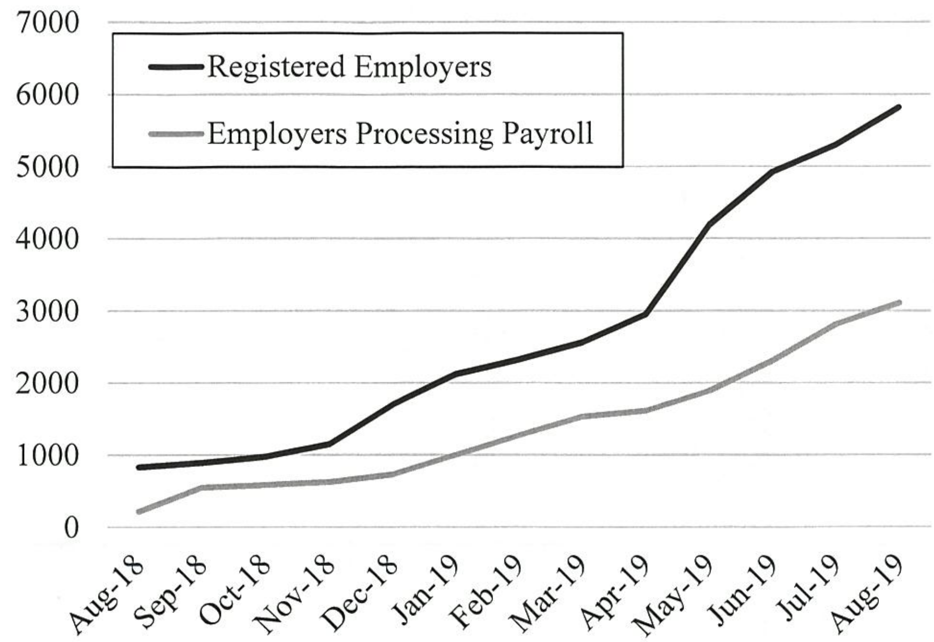
Conclusion

In conclusion, the evidence from other auto-IRA programs suggest that an employer mandate with explicit penalties for employer enrollment and compliance are necessary for the program's success. However, the 3-percent default contribution rate currently proposed by the legislation is simply insufficient to generate sufficient revenue to be financially feasible and to accumulate meaningful account balances for employees.

[8] Belbase and Sanzenbacher (2018).
[9] Beshears et al. (2009).
[10] Beshears et al. (2010). Belbase and Sanzenbacher (2017) found that automatic escalation from 6 to 10 percent did result in an approximately 5-percentage point increase in opt-out, which is statistically significant.

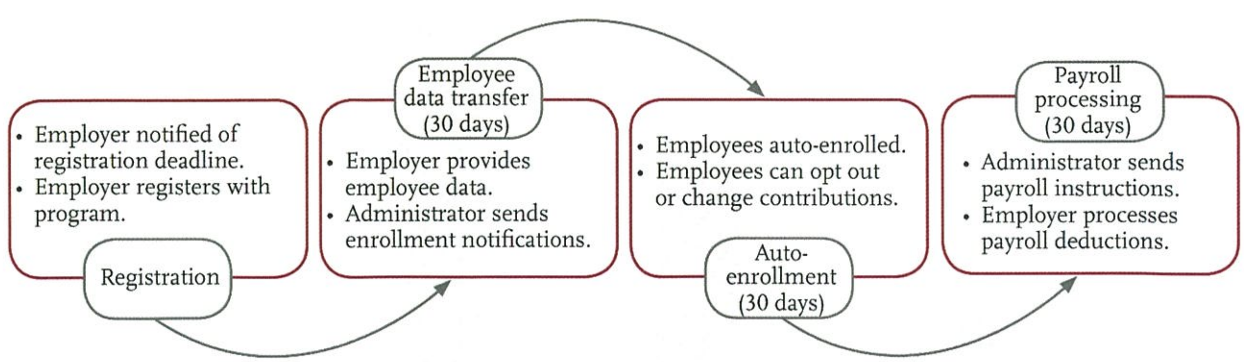
Exhibits

Exhibit 1. *Employers Participating in OregonSaves*



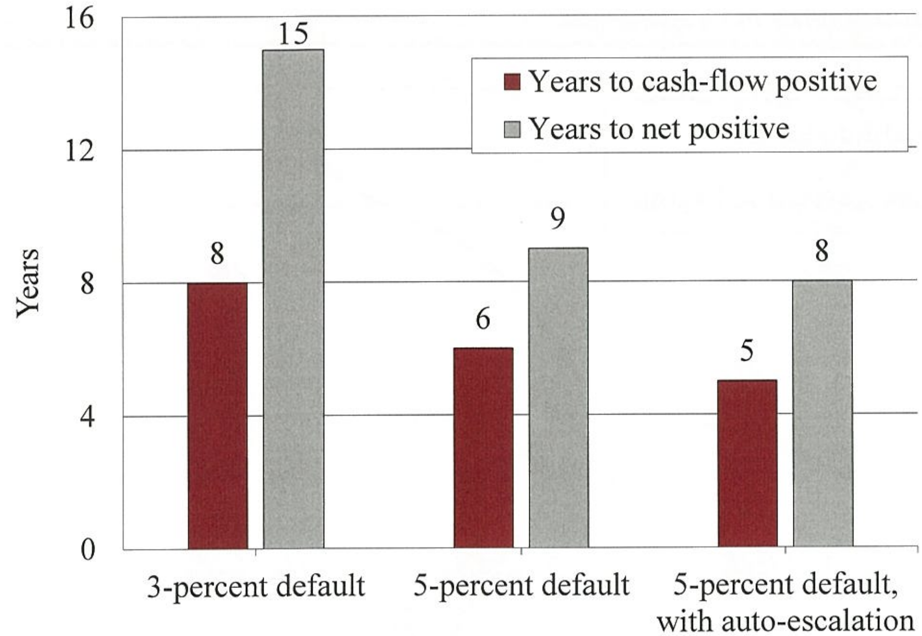
Source: Authors' calculations from administrative data provided by OregonSaves.

Exhibit 2. *Timeline for Enrolling Workers and Employers in OregonSaves*



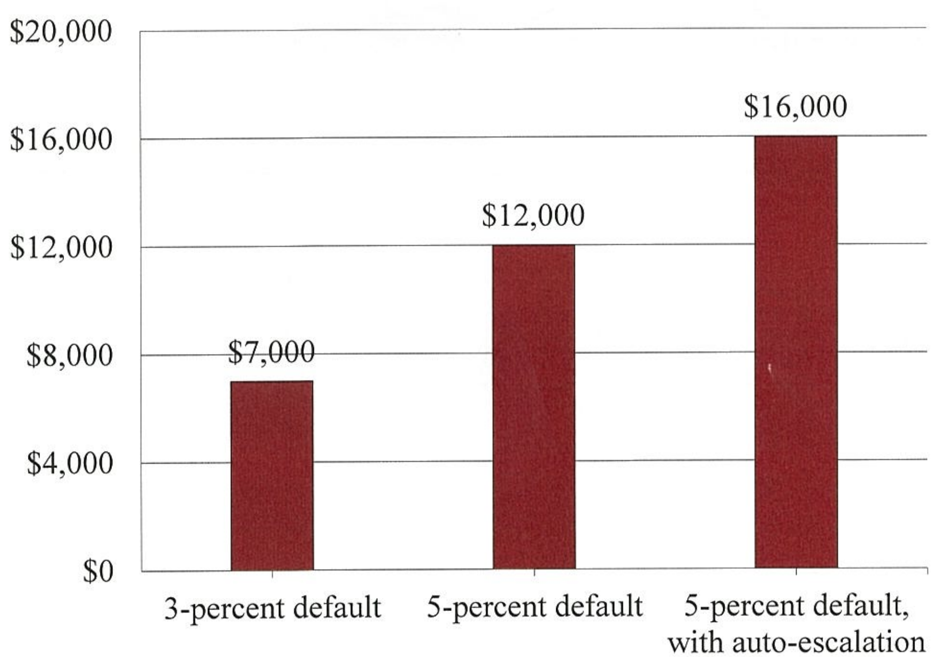
Source: Authors' illustration based on design of OregonSaves.

Exhibit 3. *Projected Years until Cash-flow Positive and Net Positive under Default Contribution Rates for OregonSaves, 2016*



Source: Center for Retirement Research (2016).
Note: Assumes a fee of 100 basis points.

Exhibit 4. *Average Account Balances Projected under Various Default Contribution Rates for OregonSaves in Year 15 of Program*



Source: Center for Retirement Research (2016).

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"Savings Access New York"

Hearing before the New York City Council's

Committee on Civil Service and Labor

Statement of

Angela M. Antonelli

Research Professor and Executive Director

Center for Retirement Initiatives

McCourt School of Public Policy

Georgetown University

Washington, D.C.

September 23, 2019

Chairman Miller and members of the Committee on Civil Service and Labor, I am Angela M. Antonelli, Research Professor and Executive Director of the Center for Retirement Initiatives at Georgetown University's McCourt School of Public Policy. Thank you for this opportunity to appear before you today. The views I express in this testimony are my own and should not be construed to represent any official position of Georgetown University.

The weakening of the pillars supporting retirement security (Social Security, employer-provided pension plans, and supplemental retirement and other savings plans) is one of the greatest fiscal and economic challenges we face today. About one-half of the private sector workforce nationally between the ages of 18 and 64 lacks access to an employer-related payroll deduction plan.[1] In New York City, almost 60 percent of the private sector workforce - approximately 1.5 million workers - lack access to retirement savings plans through their employers.[2] Lower-income and/or less-educated workers, "gig" and part-time workers, and employees of small businesses are often are among the most likely to lack access.

A readily available workplace retirement savings plan dramatically increases the likelihood that workers will begin to save for retirement. Workers without such a plan could use an individual retirement account (IRA) to save, but few actually do. For instance, only about one worker in 20 with earnings of $30,000 to $50,000 a year and no access to a payroll deduction plan contributes to an IRA consistently.[3]

Leaving approximately 60 percent of New York City's private sector workers without the opportunity to access simple, low-cost ways to save for their future security will exact a heavy toll on the economic and fiscal future of this city.

States and Cities Are Designing and Adopting New Retirement Savings Options

Since 2012, more than 40 states have introduced legislation to either establish state-facilitated retirement programs for private sector workers or study the feasibility of establishing such programs. Several states have already taken steps to expand access to simple, low-cost ways to save for those private sector workers who lack access to employer-sponsored retirement savings plans. Support for these innovative state programs among employees and employers is strong and bipartisan.

As of September 2019, there are 11 new state-facilitated retirement savings programs; 10 states (California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, and Washington) and one city (Seattle) have enacted legislation to expand

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[1]David John and Gary Koenig (2014), "Workplace Retirement Plans Will Help Workers Build Economic Security," AARP Public Policy Institute, Fact Sheet 317, p. 2, Washington, D.C. https://www.aarp.org/content/dam/aarp/ppi/2014-10/aarp-workplace-retirement-plans-build-economic-security.pdf.This number is based on data from the Current Population Survey. However, the survey was redesigned after 2013, and the accuracy of its later results has been questioned. For this reason, we do not include data from after 2013.

[2]Office of the Comptroller, City of New York. "The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City, October 2016," p. 6. https://comptroller.nyc.gov/wp-content/uploads/documents/The-New-York-City-Nest-Egg_October_2016.pdf.

[3]Employee Benefit Research Institute (2006), unpublished estimates of the 2004 Survey of Income and Program Participation Wave 7 Topical Module.

the accessibility and effectiveness of retirement savings for private sector workers.[4] (For convenience, I will refer to "states" and "state-facilitated retirement savings programs," even though cities can also adopt these programs and there is at least one city program.)

In light of the continued failure of Congress to address the large number of Americans who lack the ability to build retirement security, states have acted out of necessity. They face significant budgetary and economic consequences if more Americans enter retirement with limited financial resources. Particularly given a rapidly aging population, states will be increasingly pressed to deal with dramatic increases in the cost of social service programs for seniors living at or below the poverty line — namely, programs related to healthcare, housing, food and energy assistance.

There is also the broader benefit to the economy to consider. Lower incomes in retirement mean that consumers spend less, which reduces the available tax base, but if retirees have more savings and income to spend, they can contribute to the strength of local, state, and national economies.

States are implementing several types of program designs, described below and summarized in greater detail in the appendix:

1) Payroll deduction IRAs, usually using automatic enrollment (Auto IRAs), that certain employers are required to offer if they have no other retirement plan;
2) Payroll deduction IRAs that employers can choose to join;
3) Open Multiple Employer Plans (MEPs); and
4) Marketplaces.

Current State-Facilitated Retirement Savings Programs

Individual Retirement Account (Auto-IRA)	Voluntary Payroll Deduction IRA	Voluntary Open Multiple Employer Plan (MEP)	Voluntary Marketplace
California	New York	Massachusetts	Washington
Connecticut		Vermont	
Illinois			
Maryland			
New Jersey			
Oregon			
Seattle			

Source: Georgetown University, Center for Retirement Initiatives

All these program options are voluntary for employees because they can choose whether and how much to contribute. Six states (California, Connecticut, Illinois, Maryland, New Jersey, and Oregon) and the city of Seattle have enacted auto-IRA programs requiring employers that meet certain criteria and have chosen not to establish their own retirement plans to offer the state- or

[4]For more detailed information about state programs and legislative proposals, see the Georgetown Center for Retirement Initiatives website at http://cri.georgetown.edu/states/.

city-facilitated program to their employees. One (Washington) has a retirement marketplace, two (Massachusetts and Vermont) have enacted MEPs, and one (New York) has created a payroll deduction IRA program that companies can offer if they so choose.

Each program is at a different stage of implementation. As of September 2019, five programs — Oregon, Massachusetts, Washington, Illinois, and California — are now enrolling workers. Others are in various stages of planning and/or implementation, as detailed in the appendix.

The Auto-IRA Model is the Predominant Model in New Programs and Legislative Proposals

As noted, six states and one city have enacted laws establishing payroll deduction IRA programs based on the auto-IRA model. These states — California, Connecticut, Illinois, Maryland, New Jersey, and Oregon, in addition to the city of Seattle – have some program design differences, but all require businesses meeting certain criteria to offer their employees the state's program unless they choose to offer their own retirement plans. Workers would be enrolled automatically and contribute through payroll deduction to an IRA unless they choose to opt out.

Many of these states have begun to implement their programs, with Oregon being the first state to launch its program in late 2017; Illinois launched statewide in November 2018; and California launched on July 1, 2019. Each of these programs launched after initial pilot testing phases. Most of the state programs to date anticipate being fully implemented between 2020 and 2022.[5]

Oregon, Illinois and California programs initially selected Roth IRAs because this approach makes it easier for workers to withdraw their money without penalties, which, for some, may be important if they must address sudden financial shocks. However, these states also are now offering traditional IRAs as an option.

These programs also generally offer a set of investment funds, which include, but is not limited to, a suite of target date funds, a capital preservation fund, and a growth fund. Oregon's program takes the first $1,000 in contributions and invests it in the capital preservation fund, which protects that initial amount from market volatility but also allows workers in the early period of savings to access that money if they change their minds.[6] Similarly, CalSavers also invests the first $1,000 in payroll contributions in a money market fund and in Illinois the default is to hold the money in a money market fund for the first 90 days after the initial contribution is made.[7] In addition, OregonSaves also has a 1 percent annual auto-escalation provision up to a cap of 10 percent. The first annual escalation took place on January 1, 2019 for OregonSaves,

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[5]For an overview of program implementation timelines, see Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University (2019a), "State-Facilitated Retirement Savings Programs: A Snapshot of Plan Design Features," State Brief-19-03, May 30, 2019 Update, Washington, D.C. https://cri.georgetown.edu/wp-content/uploads/2018/12/States_SnapShotPlanDesign6-3-19FINAL.pdf.

[6]Challenges in the Retirement System: Hearings before the Finance Committee, Senate, 116th Cong. 4 (2019) (Testimony of Oregon State Treasurer Tobias).

[7]See CalSavers, "Investments." Retrieved from https://saver.calsavers.com/home/savers/investments.html?language=en#; Illinois Secure Choice, "Investments." Retrieved from https://saver.ilsecurechoice.com/home/savers/investments.html.

and more than 90 percent of participants did not change that increase.[8] CalSavers has a similar 1 percent annual auto-escalation up to a cap of 8 percent.[9]

The strong support for and promising launches of OregonSaves, Illinois Secure Choice and CalSavers have bolstered interest among more states to consider adopting an auto-IRA program.

A review of bills introduced in states and cities in 2018 and 2019 shows that most are introducing the auto-IRA model. In addition, states that enacted a different program model – notably a marketplace – are beginning to move toward an auto-IRA approach. New Jersey which had enacted a marketplace but taken no action to implement it, recently enacted a new auto-IRA program. Washington came very close to enacting an auto-IRA program in 2019 and interest remains in its adoption.

Positive Trends in Auto-IRA Program Implementation[10]

Several positive trends illustrate why these auto-IRA programs are a smart approach that helps workers at every income level and empowers more people to invest in their own futures and improve overall financial well-being.

- **Employers and Workers Strongly Support the Program.** In states implementing these programs, the level of support has only grown stronger as more workers and businesses become familiar with and benefit from the program. For example, more than 82 percent of people in Oregon support OregonSaves after its first year of implementation.[11] They know it is the right approach that will help make Oregon stronger economically over the long run.

  In addition, although these types of programs are generally implemented in waves, staggering the deadlines by which different-size employers must register and enroll their workers, many employers see the benefits and do not even wait until their deadlines; they are registering sooner rather than later to help their workers start savings sooner. In Oregon, more than 2,000 employers chose to register before their deadline.[12]

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[8]Challenges in the Retirement System: Hearings before the Finance Committee, Senate, 116th Cong. 4 (2019) (Testimony of Oregon State Treasurer Tobias).

[9]CalSavers, "Investments." Retrieved from https://saver.calsavers.com/home/savers/investments.html?language=en#.

[10]This section is adapted from Tobias Read (2018, November), "'Work Hard. Save Easy.' The OregonSaves Retirement Program is Off to a Promising Start," Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University. https://cri.georgetown.edu/work-hard-save-easy-the-oregonsaves-retirement-program-is-off-to-a-promising-start/; DHM Research and AARP (2018), "2018 Survey of Oregonians: OregonSaves Program," Washington, D.C.

[11]Tobias Read (2018, November), "'Work Hard. Save Easy.' The OregonSaves Retirement Program is Off to a Promising Start," Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University. https://cri.georgetown.edu/work-hard-save-easy-the-oregonsaves-retirement-program-is-off-to-a-promising-start/; DHM Research and AARP (2018), "2018 Survey of Oregonians: OregonSaves Program," Washington, D.C. https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2018/oregon-retirement-savings-oregonsaves.doi.10.26419-2Fres.00248.001.pdf.

[12]Challenges in the Retirement System: Hearings before the Finance Committee, Senate, 116th Cong. 3 (2019) (Testimony of Oregon State Treasurer Tobias).

The participation rates of eligible employees also have remained high, averaging approximately 71 percent for Oregon and consistent with feasibility studies predicting 20-30 percent opt-out rates. It is reasonable to expect that opt-out rates may actually decline over time.

- **Employee Contribution Levels Are Important to Success.** The standard default savings rate for OregonSaves, Illinois Secure Choice and CalSavers is 5 percent. When these programs were first being developed, a 3 percent rate was considered, but feasibility studies showed that employees would be comfortable with a higher default savings rate. Experience has now shown that this has proven to be the case with the average savings rate being close to or exceeding 5 percent in these states with workers contributing on average about $100 per month. This is similar to behavior we see with 401(k) plans, in which workers who do not opt out tend to stick with the default amount.

- **Assets Are Growing Rapidly.** Program assets for these programs continue to grow quickly as employers and employees enter the program. For OregonSaves, assets are now approaching $25 million, reflecting a steady and rapidly increasing upward trend.[13] Illinois Secure Choice has learned from OregonSaves and accelerated the timeframe and reduced the number of waves for registering and enrolling workers. Not surprisingly, the accumulation of assets for Illinois Secure Choice is also growing steadily as a result, and has already surpassed $5 million in its first eight months.[14]

- **Fees Are Already Decreasing.** OregonSaves capped fees at 1.05 percent of assets per year. They anticipate that this level will drop once the program is fully implemented and assets continue to grow. Investment fund fee reductions have already occurred with OregonSaves, with two of its funds (target date funds and growth fund) reducing their fee levels which, in turn, has reduced the all-in fees for savers invested in those options.[15]

9 Ways a New York City Auto-IRA Program Can Transform the Retirement Savings Landscape

A new state-facilitated auto-IRA program for New York City will change the retirement landscape in important ways.

1. It will help millions of workers better prepare for retirement.

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[13]Oregon State Treasury, (2019, August 6), *OregonSaves Marks Two Years and Celebrates $25 Million Saved for Retirement* [Press release]. Retrieved from https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=3382.
[14]Nowicki, J., (2019, September 10), Illinois Secure Choice program takes aim at 'retirement crisis', *Capitol News Illinois.* Retrieved from https://www.capitolnewsillinois.com/Blog/Posts/502/Uncategorized/2019/9/Illinois-Secure-Choice-program-takes-aim-at-retirement-crisis/blog-post/.
[15]Tobias Read (2018, November), "'Work Hard. Save Easy.' The OregonSaves Retirement Program is Off to a Promising Start," Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University. https://cri.georgetown.edu/work-hard-save-easy-the-oregonsaves-retirement-program-is-off-to-a-promising-start/.

Approximately 1.5 million New York City private sector workers do not have access to employer-sponsored retirement savings plan options. When employees have simple choices for contributing to savings from their regular paychecks, research shows that they are 15 times more likely to save and start on a path to greater retirement security. Although the national retirement savings crisis will not be solved overnight, facilitating access and offering millions of workers a way to begin to save using a simple, low-cost IRA goes a long way toward making a difference in addressing the problem and it is better than not saving anything at all.

2. It will help small businesses be more competitive.

Small businesses often struggle to provide their workers with the same benefits as larger companies with which they compete for talent. The time and costs associated with traditional retirement savings plans — not to mention the regulatory burden — can often discourage small employers from setting up even basic plans. New York City will make it easier for the 900,000 workers who work for small employers (those with fewer than 100 employees) and lack access to a retirement savings program.[16] Providing easy access to simple, cost-effective solutions for small businesses will make this lifeblood of the American economy more able to compete in the search for the best possible talent and retain such workers.

3. It will allow employees to be more mobile.

Employees ought to be able to change jobs without having to worry about what happens to their retirement savings. That is exactly the approach these programs take by making the accounts employee-owned and portable from one job to the next. Being able to keep and use an account if people move between jobs will be easy and helps make sure that workers do not have to worry about losing track of small retirement savings accounts or figure out what to do with those accounts if they change employers.

4. It has the potential to assist "gig workers."

Independent and "gig" workers are often overlooked. Although the New York City proposal would cover employers with five or more employees, it can also allow those smaller employers and individuals to voluntarily choose to use the city program. This important step forward ensures that the benefits enjoyed by workers and consumers alike as part of the gig economy will not be dampened by lack of access to a retirement savings plan.

5. It will benefit underserved populations, especially Hispanic workers.

The lack of access to retirement savings crisis hits some communities disproportionately, but perhaps none harder than often-underserved populations. In New York City, a large proportion of workers who will benefit are Hispanic. Hispanic workers find themselves in jobs without

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[16]Office of the Comptroller, City of New York (2016). "The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City, October 2016," p. 47. https://comptroller.nyc.gov/wp-content/uploads/documents/The-New-York-City-Nest-Egg_October_2016.pdf.

retirement savings programs at a much-higher rate than whites. In fact, 68.5 percent of Hispanics in the city do not have access to employer-sponsored retirement plans, as compared to 52.3 percent of whites.[17] A New York City auto-IRA program will help reduce that disparity by increasing access.

6. It will reduce the burden on state and federal budgets.

When Americans retire without having set aside enough savings to live on, it can have a significant impact on government budgets. Economically disadvantaged seniors must turn to public programs for support to make ends meet, putting additional pressure on taxpayers. The simplest solution lies in helping Americans to better prepare for their post-work years by making retirement savings simple and convenient.

An analysis of New York City households found 30 percent of senior households relied on Social Security for over 75 percent of their income in 2015 and 26% of households relied on Social Security for more than 90% of income.[18] A new program can contribute significantly to reducing the future rate of growth of government assistance programs for seniors, thus increasing their financial independence.

7. It will be a model for other states.

The substantial size of the New York City market makes it impossible for others to ignore and often enables it to serve as a template for other states to embrace. With the magnitude of the existing challenge, having a city like New York City to study and use as a model is likely to improve retirement solutions far beyond its borders.

8. It will inspire further innovation.

As these new programs enables more workers to begin setting aside funds for retirement for the first time, they will create a new generation of savers. This should open the door for the financial services industry to develop new solutions to meet their needs and better prepare all Americans for their post-work years. For example, there is already pressure to improve financial education and make lifetime income solutions more readily available. Greater innovation will help improve outcomes for Americans in their golden years.

9. It will create new opportunities for the private sector.

Helping more workers save for retirement creates new opportunities for the financial services industry to help those workers manage their growing savings, such as growing out of a state-

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[17]Ibid.
[18]Office of the Comptroller, city of New York (2017). "Aging with Dignity: A Blueprint for Serving NYC Growing Senior Population, March 2017," p. 13. https://comptroller.nyc.gov/wp-content/uploads/documents/Aging_with_Dignity_A_Blueprint_for_Serving_NYC_Growing_Senior_Population.pdf.

facilitated program into 401(k) employer-provided retirement savings plans. In addition, ensuring that employers now must offer their workers access to a way to save challenges plan providers to design and offer simpler, more-cost-effective plans to employers that may want to sponsor their own more-robust 401(k) plan now or in the future.

New York City Can Transform the Retirement Savings Landscape

While there is still much to be done to significantly improve retirement security, new state-facilitated retirement savings programs are providing important and much-needed opportunities to drive the transformation of the retirement savings landscape for the better. The scale of a program in New York City will make a meaningful difference for residents while providing valuable models and lessons to guide future action for the rest of the nation.

Appendix

GEORGETOWN UNIVERSITY

McCourt School *of* Public Policy

Center for Retirement Initiatives

State-Facilitated Retirement Savings Programs: A Snapshot of Program Design Features

State Brief 19-03

August 30, 2019

UPDATE[1]

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[1] This updates State Brief 19-03, dated June 30, 2019.

OVERVIEW

Since 2012, at least 43 states have acted to implement, study, or consider legislation to establish state-facilitated retirement savings programs. At least 22 states and cities introduced legislation to date in 2019 to address the retirement savings gap among private sector workers. During the 2019 legislative sessions, states and cities continued to lead with new, innovative proposals. Additional detailed information about the progress of state legislative initiatives in 2019 and the status of state-facilitated retirement savings program implementations can be found at https://cri.georgetown.edu/states.

11 State-Facilitated Retirement Savings Programs

As of August 30, 2019, 10 states and one city[2] have enacted state-facilitated retirement savings programs for private sector workers. To date, these programs have adopted one of the following four models:

Individual Retirement Account ("Auto-IRA")[3]	Voluntary Payroll Deduction IRA	Voluntary Open Multiple Employer Plan ("MEP")	Voluntary Marketplace
California	New York	Massachusetts	Washington
Connecticut		Vermont	
Illinois			
Maryland			
New Jersey			
Oregon			
Seattle			

Most of these states are actively implementing their programs. Five states — California, Illinois, Massachusetts, Oregon, and Washington — are open to employers in 2019. Massachusetts and Oregon opened their programs in late 2017, Washington opened its retirement marketplace in March 2018, Illinois launched its program in November 2018, and California launched its program statewide in July 2019. Connecticut, Maryland, and Vermont also are making progress but are in earlier stages of program implementation.

[2] For simplicity, all programs are referred to as "state-facilitated," even if it includes one or more cities.

[3] Auto-IRA programs generally require eligible employers to participate if they do not already offer a qualified retirement plan to their workers. Employers are required to either facilitate employee participation in the state-facilitated program or establish their own plans. Workers would be automatically enrolled and contribute through payroll deduction to an IRA unless they choose to opt out.

Individual Retirement Accounts (Auto-IRAs)[4]

(Listed by date of enactment)

Illinois
Oregon
Maryland
Connecticut
California
Seattle
New Jersey

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[4] On August 30, 2016, the U.S. Department of Labor (DOL) published a final rule related to Savings Arrangements Established by States for Non-Governmental Employees, proposing a new safe harbor for state IRA retirement savings arrangements that would allow for qualifying state programs to be exempt from ERISA. On December 20, 2016, the U.S. Department of Labor published a similar final rule for qualified state political subdivisions (e.g., cities, counties). These rules were nullified using the Congressional Review Act, HJ Res. 66 and HJ Res. 67, respectively, on May 17, 2017, and April 13, 2017. These actions did not affect the 1975 DOL safe harbor (see 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975)), which lays out the conditions under which voluntary payroll deduction IRAs would be exempt from ERISA. In response to a legal challenge, the United States District Court, Eastern District of California, ruled on March 28, 2019, that the CalSavers Program is not preempted by federal ERISA law. The plaintiffs filed an amended complaint on April 11, 2019, and the case is currently pending.

Illinois Secure Choice

Year Enacted	2015, as amended in 2016, 2017 and 2019
Employer Participation	Mandatory for certain employers, with a two-year deferral for new businesses. Employers retain the option of providing a qualified plan through the private market.
Employers Affected	Employers with 25 or more employees that have not offered a qualifying retirement plan in the last two years.
Administrative Entity	The Illinois Secure Choice Savings Board, chaired by the Treasurer
Structure of Accounts	Roth IRA as the default, with a traditional IRA option as an alternative election
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	5%
Employer Contribution	Not permitted
Availability to Other Employers	Employers with fewer than 25 employees can voluntarily choose to participate in the program.
Investment of Assets	The program offers a suite of target date funds based upon the age of the enrollee as the default investment option and additional investment options including a capital preservation fund, a growth fund, and a conservative fund. For the first 90 days after the initial contribution is made to an account after enrollment, the default is to hold the money in a money market fund, but participants can select a different fund option immediately. The money market fund is not a separate fund option but a temporary holding vehicle.
Fees	Total expenses cannot exceed 0.75% of the total trust balance.
Implementation Timeline	After pilot testing was completed in 2018, the program formally launched in November 2018 using a three-phase registration process, with the final deadline for the smallest employers (those with 25 to 99 employees) to register ending in November 2019. However, all employers are free to register at any time and do not have to wait for the registration deadlines. By law, all employees must be enrolled in the program by December 31, 2020.

OregonSaves

Year Enacted	2015, as amended in 2019
Employer Participation	Mandatory. Employers retain the option of providing an alternative qualified retirement plan from the private market.
Employers Affected	Employers that do not currently offer qualified plans
Administrative Entity	The Oregon Retirement Savings Board, chaired by the Treasurer
Structure of Accounts	Roth IRA as the default, with a traditional IRA option as an alternative election
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	5% with auto-escalation of an additional annual 1% until a maximum of 10% is reached. An employee may opt out of auto-escalation and set his or her own rate. The first annual auto-escalation took place on January 1, 2019, and applied to participants who had been contributing for at least six months and contributing less than 10%.
Employer Contribution	Not permitted
Availability to Other Employers	Available to employers with no employees
Investment of Assets	The program offers a suite of target date funds based upon the age of the enrollee as the default investment option and additional investment options including a capital preservation fund and a growth fund. By default, the first $1,000 in contributions is invested in the OregonSaves Capital Preservation Fund, but participants can select a different fund option immediately.
Fees	The Board will charge each IRA a program administrative fee not to exceed 1.05% per annum.
Implementation Timeline	Two pilots were completed in 2017. The program is being implemented in six employer registration phases or "waves" based on the number of employees. To date, registration for employers with 10 or more employees has been completed. Employers with five to nine employees have until November 15, 2019, to register and the final group of employers to register — employers with four or fewer employees — must do so by May 15, 2020. All employers are free to register at any time and do not have to wait for the registration deadlines.

Maryland$aves

Year Enacted	2016, as amended in 2018
Employer Participation	Mandatory for all employers that pay employees through a payroll system or service, with a two-year deferral for new businesses. Employers retain the option of providing a plan through the private market.
Employers Affected	Employers that do not currently offer qualified plans
Administrative Entity	The Maryland Small Business Retirement Savings Board, chair elected by the Board members
Structure of Accounts	One or more payroll deposit IRA arrangements
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	The Board will set default, minimum, and maximum employee contribution levels.
Employer Contribution	Not permitted
Availability to Other Employers	The Board may evaluate and establish the process by which a non-covered employer, an employee of a non-participating employer, or a self-employed individual may participate.
Investment of Assets	The Board will establish a range of investment options, including a default investment selection for employees' payroll deposit IRAs. The Board cannot offer options that could result in liability to the state or its taxpayers. When selecting investment options, the Board will consider methods to minimize the risk of significant investment losses at the time of a participating employee's retirement. The Board will consider investment options that minimize administrative expenses and may provide an investment option that provides an assured lifetime income.
Fees	Administrative expenses may not exceed 0.5% of assets under management in the program.
Implementation Timeline	The Board is refining its program implementation timeline, with a possible pilot program launch by mid-2020 and statewide program implementation by fall 2020.

Connecticut Retirement Security Authority

Year Enacted	2016, as amended in 2019
Employer Participation	Mandatory. Employers retain the option of providing a plan available through the private market.
Employers Affected	Qualified employers with five or more employees that do not currently offer a plan.
Administrative Entity	The Connecticut Retirement Security Authority, chair appointed by the Governor
Structure of Accounts	Roth IRA
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	3%
Employer Contribution	Not permitted
Availability to Other Employers	A private employer with four employees or fewer may choose to make the program available.
Investment of Assets	Each participant's account will be invested in an age-appropriate target date fund or other investment vehicles selected by the Authority. Once the participant reaches normal retirement age, 50% of the participant's account will be invested in the lifetime income investment. Participants may elect to invest a higher percentage of account balances in the lifetime income investment. The Authority will designate a lifetime income investment option intended to provide participants with a source of retirement income for life.
Fees	After completion of the fourth calendar year after the program effective date, total annual fees associated with the program cannot exceed 0.75% of the total value of the program assets.
Implementation Timeline	The Board is refining its program implementation timeline, with a possible pilot launch by the end of 2019 or early 2020.

CalSavers

Year Enacted	2016, as amended in 2017, 2018 and 2019
Employer Participation	Mandatory. Employers retain the option of providing an alternative qualified retirement plan through the private market.
Employers Affected	Employers with five or more employees that do not already provide a qualified retirement plan and that satisfy requirements for a payroll deposit retirement savings arrangement, and employers of providers of in-home supportive services, if determined to be eligible.
Administrative Entity	The California Secure Choice Retirement Savings Investment Board, chaired by the Treasurer
Structure of Accounts	Roth IRA as the default, with a traditional IRA as an alternative election
Automatic Enrollment	The Board will disseminate an employee information packet with information about the program and appropriate disclosures, including the mechanics of how to make contributions to the program. Employees must acknowledge that they have read all the disclosures and understand their content.
Employee Opt-out	Yes
Default Contribution Rate	5% with auto-escalation of 1% per year to be capped at 8% of salary. An employee may opt out of auto-escalation and set his or her own rate.
Employer Contribution	Permitted if would not trigger ERISA
Availability to Other Employers	Employees of non-participating employers and the self-employed can participate.
Investment of Assets	The program offers a suite of target date funds based upon the age of the enrollee as the default investment option and additional investment options including a capital preservation fund, a bond fund, a global equity fund, and an environmental, social, governance (ESG) fund. By default, the first $1,000 in contributions is invested in a capital preservation option, but participants can select a different fund option immediately.
Fees	On or after six years from the effective program date, expenditures from the Administrative Fund cannot exceed 1% of the total Program Fund annually.
Implementation Timeline	The pilot program began in November 2018, and official statewide employer registration began in July 2019. Employer registrations will be implemented in three phases, beginning with employers with 100 or more employees, followed by employers with 50 or more employees, and then employers with five or more employees. Each registration phase will last about a year. Registration for all eligible employers will be completed by June 2022. However, all employers are free to register at any time and do not have to wait for the registration deadlines.

Seattle Retirement Savings Plan

Year Enacted	2017
Employer Participation	Mandatory. There is a two-year deferral for new businesses.
Employers Affected	Employers that do not currently offer qualified plans or participate in a multiple employer plan (MEP)
Administrative Entity	The Seattle Retirement Saving Plan Board of Administration, chair appointed by the Mayor
Structure of Accounts	One or more payroll deposit IRA arrangements
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	The Board can set default, minimum, and maximum rates. The plan must offer default escalation.
Employer Contribution	Not permitted
Availability to Other Employers	The Board can establish participation rules for self-employed individuals or employees who are not eligible to participate in an employer's qualified retirement plan.
Investment of Assets	The Board will establish several investment funds, each pursuing an investment strategy and policy established by the Board. The Board will establish at least three "core" investment funds, diversified to minimize the risk of large losses under the circumstances, and may establish one or more "non-core" investment funds. The Board may, at any time, add, replace, or remove any investment fund. Investment funds may include mutual funds, index funds, collective funds, separately managed accounts, exchange-traded funds, or other pooled investment vehicles that are generally available in the marketplace.
Fees	Not specified. The plan must keep administration fees low, but sufficient to ensure that the plan is sustainable.
Implementation Timeline	Contributions may begin no earlier than January 1, 2019, and no later than January 1, 2021. The Board decided in December 2018 to await action by the Washington State Legislature on proposals to establish a statewide Secure Choice auto-IRA program before deciding whether and how to proceed with implementation.

New Jersey Secure Choice Retirement Savings Program

Year Enacted	2019
Employer Participation	Mandatory. There is a two-year deferral for new businesses.
Employers Affected	Employers with 25 or more employees that have not offered a qualified retirement plan. There is a two-year deferral for new businesses.
Administrative Entity	The New Jersey Secure Choice Savings Board, chaired by the Treasurer
Structure of Accounts	One or more payroll deposit IRA arrangements
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	3%
Employer Contribution	Not permitted
Availability to Other Employers	Employers with fewer than 25 employees and/or those that have been in business for less than two years may provide payroll deposit retirement savings arrangements for each employee who elects to participate in the program.
Investment of Assets	The Board may establish any or all of the following investment options: a capital preservation fund, into which the Board may provide that the first $1,000 in contributions be deposited and also may provide for an account revocation period during which an enrollee may withdraw the deposited amounts without penalty; a life-cycle fund; or any other investment option deemed appropriate by the Board. The Board shall designate by rule or regulation one of the investment options as the default investment option for enrollees who fail to elect an investment option and may, from time to time, amend, modify, or repeal such investment options as it deems necessary or proper, and may subsequently select, by rule or regulation, a different investment option as the default investment option.
Fees	During the first three years after the establishment of the program, annual administrative fees may not exceed 0.75% of the Program Fund. After that time, the annual administrative fees shall not exceed 0.6% of the Program Fund.
Implementation Timeline	This act shall take effect immediately. Enrollment of employees shall begin within 24 months after the effective date of the act but the date can be extended by an additional 12 months. The Board shall implement the program in two phases based on the size of the employers participating, with implementation for larger employers first. No later than nine months after the Board opens the program for enrollment, each covered employer must establish a payroll deposit retirement savings arrangement to allow each employee to participate in the program.

Voluntary Payroll Deduction IRA[5]

New York

[5] New York's voluntary payroll deduction program is assumed to be designed to be covered under the 1975 DOL safe harbor (See 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975)), which lays out the conditions under which payroll deduction IRAs would be exempt from ERISA.

New York State Secure Choice Savings Program

Year Enacted	2018
ERISA Applicability	No
Employer Participation	Voluntary
Employers Affected	Employers that have not offered a qualified retirement plan in the preceding two years
Administrative Entity	New York State Secure Choice Savings Program Board
Structure of Accounts	Roth IRA
Automatic Enrollment	The Board may consider use of automatic enrollment as allowed under federal law.
Employee Opt-out	Yes
Default Contribution Rate	3%
Employer Contribution	Not permitted
Availability to Other Employers	Not specified
Investment of Assets	The Board shall establish or authorize a default investment option for enrollees who fail to elect an investment option. The Board may establish or authorize any additional investment decisions that the Board deems appropriate, including but not limited to: a conservation principal protection fund; a growth fund; a secure return fund whose primary objective is the preservation of the safety of principal and the provision of a stable and low-risk rate of return; an annuity fund; a growth and income fund; or a life cycle fund with a target date based upon factors determined by the Board.
Fees	The Board shall allocate administrative fees to individual retirement accounts in the program on a pro rata basis.
Implementation Timeline	This act will take effect immediately. The program shall be implemented, and enrollment of employees shall begin, within 24 months after the effective date of this article. The Board may delay implementation by an additional 12 months if it determines further delay is necessary.

Open Multiple Employer Plans (MEPs)[6]

(Listed by date of enactment)

Massachusetts
Vermont

[6] On November 18, 2015, the U.S. Department of Labor issued a final Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act (ERISA) of 1974. The Bulletin outlines those state-facilitated retirement savings programs that would include ERISA-covered retirement plans. These options include a marketplace, prototype plans, and state-facilitated "open" multiple employer plans (MEPs). The following state plans are covered by the Interpretive Bulletin.

Massachusetts Defined Contribution CORE Plan ("CORE Plan")

Year Enacted	2012
ERISA Applicability	Yes
Employer Participation	Voluntary
Employers Affected	Nonprofits with 20 or fewer employees
Administrative Entity	A not-for-profit defined contribution committee, within the Office of the State Treasurer and Receiver General
Structure of Accounts	401(k) plan
Automatic Enrollment	Yes
Employee Opt-out	Yes
Default Contribution Rate	6% with an annual auto escalation of 1% or 2%, up to 12%
Employer Contribution	Permitted
Availability to Other Employers	No
Investment of Assets	The Plan offers 12 CORE default target date funds based on expected retirement age and four objective base funds: CORE Growth Fund; CORE Income Fund; CORE Inflation Fund; and CORE Capital Preservation Fund. For additional fees, a participant can choose to have the account professionally managed with a portfolio that would be developed "using one or more investments that comprise the CORE Plan investment lineup and may also use additional investments not otherwise available to **CORE Plan** participants."
Fees	For the **participant**, there is a $65 annual fee, deducted automatically from the participant account, and other administrative fees depending on the "elective Plan features used by a participant. Each investment option has an administrative, advisory and investment management fee that varies by investment option" and "additional fees, including administrative and other service fees, may be assessed over time." There is a "$200 plan administrative fee charged annually to the **participating nonprofit**, beginning in their second year of participation."
Implementation Timeline	The program launched in October 2017 and is open for enrollment.

Vermont Green Mountain Secure Retirement Plan

Year Enacted	2017, as amended in 2019
ERISA Applicability	Yes
Employer Participation	Voluntary. The Board may study and make recommendations on methods to increase participation if, after three years, significant numbers of residents remain who are not covered by a retirement plan.
Employers Affected	Employers with 50 employees or fewer that do not currently offer a plan
Administrative Entity	Green Mountain Secure Retirement Board, chaired by the Treasurer
Structure of Accounts	401(k) plan
Automatic Enrollment	Permissible. Auto-enrollment of employees will occur once an employer opts to join the MEP.
Employee Opt-out	Yes
Default Contribution Rate	Not specified
Employer Contribution	Permitted
Availability to Other Employers	The self-employed are eligible to participate. No earlier than one year after implementation, the Board intends to provide options via a clearinghouse/marketplace to individuals who are not eligible to participate, or choose not to participate, in the MEP, or whose employers opted not to join the MEP.
Investment of Assets	Not specified
Fees	Not specified
Implementation Timeline	The Board is considering a revised implementation timeline with a possible launch by early 2020.

Marketplaces[7]

Washington

[7] On November 18, 2015, the U.S. Department of Labor issued a final Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act (ERISA) of 1974. The Bulletin outlines those state-facilitated retirement savings programs that would include ERISA-covered retirement plans. These options include a marketplace, prototype plans, and state-facilitated "open" multiple employer plans (MEPs). The following state plan is covered by the Interpretive Bulletin.

Washington Small Business Retirement Marketplace

Year Enacted	2015, as amended in 2017
ERISA Applicability	ERISA cannot apply to the state to operate the marketplace, but ERISA plans are allowed in the marketplace with ERISA requirements applying to participating employers.
Employer Participation	Voluntary
Employers Affected	Fewer than 100 employees
Administrative Entity	State Department of Commerce
Structure of Accounts	SIMPLE, Roth and traditional IRAs, and ERISA plans (e.g., 401(k)s) can be included. May also offer "life insurance plans designed for retirement purposes"
Automatic Enrollment	No state requirement, but employers may auto-enroll as IRS rules allow
Employee Opt-out	Voluntary employee participation
Default Contribution Rate	Not specified
Employer Contribution	Permitted if an ERISA plan option
Availability to Other Employers	Self-employed people and sole proprietors are eligible to participate in the marketplace.
Investment of Assets	The marketplace currently offers five types of 401(k) plans from Saturna Trust Company and a Roth and a traditional IRA from Finhabits. Others may be added in the future.
Fees	No more than 1% in total annual fees to investors. Participating employers may not be charged an administrative fee. Financial services firms may charge enrollees a de minimis fee for new and/or low-balance accounts in amounts negotiated and agreed upon by the Department and financial services firms. No later than September 2020, the Department will evaluate the ongoing need to allow de minimis fees to be charged to enrollees. Fees associated with products offered in the marketplace can be found on the **Retirement Marketplace** website.
Implementation Timeline	The marketplace opened in March 2018.

GEORGETOWN UNIVERSITY

McCourt School *of* Public Policy

Center for Retirement Initiatives

AARP Real Possibilities
New York City

Testimony of
Beth Finkel, State Director
AARP New York

New York City Council
Committee on Civil Service and Labor

September 23, 2019

City Hall
New York, New York

Introductions 888-A (Kallos) and 901-A (Miller)

Contact: Chris Widelo (212) 407-3737 | cwidelo@aarp.org

Chairperson Miller and members of the Civil Service and Labor Committee, my name is Beth Finkel and I am the state director for AARP New York. On behalf of our nearly three-quarters of a million members age 50 and older in New York City, I want to thank you for the opportunity to testify today on Introductions 888-A (Kallos) and 901-A (Miller). Together, these pieces of legislation establish a workplace retirement savings program in New York City for private sector employees.

The legislation to establish a workplace retirement savings program in New York City is an effective solution to help employees save for their retirement.

Today, a secure retirement is out of reach for millions of New Yorkers. Over 3.5 million private sector workers have no access to a retirement savings account through their employer. That means more than half of the private sector workforce has no way to build their financial future at work, even though workers are 15 times more likely to save for retirement if their employer offers a plan.

In a 2015 AARP survey of New York City voters age 35 to 69, many expressed worry about their own personal financial situation. The two things both Gen X and Boomers worry about the most are saving and planning for retirement. More than three-fourths (78%) of NYC's Gen X worry about not planning and saving enough for retirement. Among Boomers, two-thirds (66%) worry about not saving enough and 61 percent worry about not planning enough for retirement.

In 2017 AARP partnered with the Asian American Federation, Hispanic Federation, NAACP and Urban League to issue a report on racial and ethnic disparities impacting the 50+. This report found that white 50-plus New Yorkers' retirement incomes are almost double that of African American/Black (AA/B), Asian American Pacific Islander (AAPI) and Hispanic/Latino (H/L) New Yorkers, and the majority of 50-plus New Yorkers of color are likely to retire with incomes near the poverty threshold, with limited ability to cover basic needs, not to mention save money or build other assets.

The majority of AA/B, AAPI and H/L retirees in New York rely heavily on Social Security income. Social Security benefit levels are tied to one's earnings, and because New Yorkers of color generally earn less money than white New Yorkers while working, there are striking racial and ethnic disparities in the Social Security income received by African American/Black, Asian American/Pacific Islander and Hispanic/Latino retirees in New York. In fact, African American/Black New York retirees receive 78.4% of the Social Security income of white New Yorkers. This disparity is even greater for H/L and AAPI New Yorkers, who receive 60.8% and 43.4% of what white New Yorkers receive in Social Security income, respectively.

Access to a retirement savings plan in the workplace is a key recommendation to help combat the disparity found by this report. It is worth mentioning again that you are 15 times more likely to save for retirement if your employer offers a plan. Pivoting back to our 2015 survey of Boomers and Gen X, roughly 25% of both generations in NYC have no access to a workplace retirement savings plan. Among owners and employees of small business, half have no access at all to a workplace retirement savings plan.

New York City is the greatest city in the world but it is also an expensive city and we know that Social Security alone is not enough to retire on alone. Upon retirement AARP's research shows that over half of all Boomers, and two-thirds of Gen X say they will probably leave the City because they can no longer afford to live here. If they leave, all of New York City will suffer. New York City residents aged 50 plus represented more than $70 billion in consumer spending.

Access to a workplace retirement savings account is a significant step forward for New York City residents to retire successfully. While New York State passed a plan in 2018 it is not mandatory for employers to offer and it is optional for employees as well. This proposal will ensure that it is mandatory for employers of a certain size and it is opt-out for employees which is the key to making it effective.

AARP would like to note that while we are testifying here today in support of both Intro 888-A and 901-A, we strongly urge the Council to update the language of 888-A to reflect that of the Administration. In particular, AARP supports lowering the threshold to require employers with five or more employees to offer a workplace retirement savings account. Additionally, we would like to see the default employee contribution increased from three to five percent.

Thank you for the opportunity to testify today.

Yale SCHOOL OF MANAGEMENT

JAMES J. CHOI
Professor of Finance

PO Box 208200
New Haven CT 06520-8200
T 203 436-1833
F 203 436-9252
james.choi@yale.edu
som.yale.edu/choi

courier
165 Whitney Avenue
New Haven CT 06511

September 18, 2019

To the Committee on Civil Service and Labor:

I am pleased to offer this testimony on the proposal to require New York City employers to establish an automatic enrollment IRA for their workers.

Automatic enrollment in retirement savings plans is a topic that I have studied for two decades. I coauthored some of the earliest studies that showed that automatic enrollment has a dramatic positive effect on the probability that employees will contribute to their retirement savings plan.[1] The U.S. Department of Labor cited these papers as a motivation for key provisions of the Pension Protection Act of 2006 that encourage employers to adopt automatic enrollment.

More recently, I have coauthored a study that found that automatic enrollment does not increase credit card debt or financial distress.[2] We also found no statistically significant effects on auto debt and first mortgage debt, although there is considerably more uncertainty around these estimates.

Nearly all of the previous research on automatic enrollment has been done on large employers that voluntarily offer 401(k) plans. The types of employers that would be affected by the New York City proposal tend to be smaller and attract a different kind of employee. Whereas automatic enrollment in large 401(k) plans tends to result in participation rates around 90%, requiring automatic enrollment at employers that did not organically offer a retirement savings plan previously does increase participation rates, but not to such high levels. In the OregonSaves program, which is similar

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[1] James Choi, David Laibson, Brigitte Madrian, and Andrew Metrick, 2002. "Defined contribution pensions: Plan rules, participant decisions, and the path of least resistance." In James Poterba, ed., *Tax Policy and the Economy* 16, pp. 67-114. http://faculty.som.yale.edu/jameschoi/tpe_plr.pdf

James Choi, David Laibson, Brigitte Madrian, and Andrew Metrick, 2004. "For better or for worse: Default effects and 401(k) savings behavior." In David Wise, ed., *Perspectives on the Economics of Aging*. Chicago: University of Chicago Press, pp. 81-121. http://faculty.som.yale.edu/jameschoi/betterorworse.pdf

[2] John Beshears, James Choi, David Laibson, Brigitte Madrian, and William Skimmyhorn, 2019. "Borrowing to save? The impact of automatic enrollment on debt." Working paper. http://faculty.som.yale.edu/jameschoi/total_savings.pdf

to the New York City proposal, the participation rate in the auto-IRA is 62%.[3] In the United Kingdom, the participation rate under mandatory automatic enrollment is 88% for companies with more than 58 employees, 74% for companies with 50-57 employees, 67% for companies with 30-49 employees, and 70% for companies with 2-29 employees.[4] Note that the 70% participation rate for the smallest companies—while considerably lower than 100%—is still a 44 percentage point increase relative to the pre-automatic enrollment regime.

The default contribution rate chosen matters a great deal for how much people contribute. In OregonSaves, 93% of participants are contributing 5% of their income, which is the default.[5] However, the default contribution rate—as long as it is greater than zero—does *not* have much of an effect on participation rates, at least in 401(k) plans. A Vanguard study of 277 401(k) plans with automatic enrollment covering 187,016 employees found that the average participation rate is 93%, 93%, 92%, 92%, and 93% under a default contribution rate of 2%, 3%, 4%, 5%, and 6% of income, respectively.[6] Clearly, then, the default contribution rate must be chosen carefully. A default that is too low can have the unintended consequence of lowering average savings.

Ideally, individuals should have just a single retirement account that both their current and future employers send contributions to. Such a setup has the advantages of being easier to manage for the individual and lowering administrative costs by concentrating all the individual's retirement balances into a single account. The fixed costs of administering a low-balance account can exceed any reasonable earnings that the balances can accrue, creating a situation where the account will lose value over time due to fees unless it is subsidized. This problem is exacerbated if an individual has multiple low-balance accounts.

My biggest concern with the New York City proposal is its potential for creating many accounts with permanently small balances. Current New York City workers have a significant probability of moving to an employer

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[3] Anek Belbase and Geoffrey Sanzenbacher, 2018. "How have workers responded to Oregon's auto-IRA?" https://crr.bc.edu/wp-content/uploads/2018/12/IB_18-22.pdf

[4] Jonathan Cribb and Carl Emmerson, 2019. "Requiring auto-enrollment: Lessons from UK retirement plans." https://crr.bc.edu/wp-content/uploads/2019/03/IB_19-6.pdf

[5] Anek and Belbase, 2018.

[6] Jeffrey Clark and Jean Young, 2018. "Automatic enrollment: The power of the default." https://institutional.vanguard.com/iam/pdf/CIRAE.pdf

outside of New York City in the next few years. If they do so, they will leave a relatively small dollar accumulation in their New York City IRA, and they have a high likelihood of not rolling this money over into another IRA or 401(k). Not only does this small-balance account create net costs for the system, but it increases the chances that the individual loses track of the account. In Australia, which has a mandatory retirement savings system that covers 15.6 million people, there are 6.2 million lost and unclaimed accounts collectively holding US$12 billion.[7] Around 40% of people have more than one retirement account, and the failure to consolidate these accounts costs Australians US$1.8 billion every year in extra fees.[8]

Because Congress has not created a federal auto-IRA that would hold contributions for a worker in a single account even as he or she moves anywhere in the country, more localized solutions are emerging. Each system will tend to suffer less from the small-balances problem to the extent that it covers a larger economic area that current workers are less likely to leave. I am uncertain whether New York City is a sufficiently large region by itself. It would be desirable if New York City could coordinate its auto-IRA accounts with those now emerging at the New York state level, New Jersey, and Connecticut.

Finally, the U.S. Department of Justice has just announced that it is backing a lawsuit that seeks to shut down the California auto-IRA program because it allegedly violates the federal Employee Retirement Income Security Act of 1974 (ERISA). I am not qualified to opine on the merits of the suit and its likelihood of success, but it would certainly be disastrous for an auto-IRA program to begin operation and then be forced to shut down soon thereafter.

Sincerely yours,

[7] https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Super-statistics/Super-accounts-data/Multiple-super-accounts-data/

[8] https://thenewdaily.com.au/money/superannuation/2018/10/09/how-to-consolidate-super/

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NEW YORK CITY COMMITTEE ON CIVIL SERVICE & LABOR AND COMMITTEE ON CONTRACTS

HEARING ON

INT. NO. 888 – A LOCAL LAW IN RELATION TO ESTABLISHING A RETIREMENT SAVINGS PROGRAM FOR PRIVATE-SECTOR EMPLOYEES

September 23, 2019

The Securities Industry and Financial Markets Association[1] is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers. SIFMA's members provide services to investors and retirement plans throughout New York, including advisory services, investment opportunities and plan recordkeeping.

We agree that there is a retirement savings challenge in this country and strongly support proposals to help investors save in a safe, effective and efficient manner. Int. 888 would establish a mandatory-on-employer Roth IRA that would automatically enroll eligible private sector employees. This particular proposal raises a number of concerns and does not consider many of the more recent programs that have been authorized by states across the country – including in New York.

Ten states have enacted laws authorizing the creation of state-run retirement plans for private sector workers. These are California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont and Washington State. Of the earliest states to study these types of plans and move forward (California, Illinois, Oregon and Massachusetts), three of them authorized a plan like the one proposed in Int. 888. States that began the process a bit more recently have turned towards more robust plans that present fewer challenges for both savers and the state. Such plans include the marketplace-style plans authorized in Washington State and New Jersey, a 401(k)-style plan that is operational in Massachusetts, a multiple employer plan in Vermont, and a slightly different IRA in New York State. Each of these plans have enjoyed wide support from many consumer groups.

Below, we have outlined several of the challenges referenced above and why alternate plans make more sense for New York City and its residents – for example, developing a specific city-run plan that follows the general outline of New York State's newly authorized program (which could provide savers with two strong options to best fit their individual needs). We urge you to consider the following when contemplating the establishment of a city-run retirement plan for private sector workers:

(1) **Current Access to Retirement Savings**. The market for retirement savings products in New York is robust and highly competitive – and largely based in New York City. More than 500,000 people are employed in the finance and insurance industries, which provide numerous, fairly priced retirement savings options, including 401(k), 403(b), 401(a) and 457(b) plans, as well as SIMPLE, SEP and traditional and Roth IRAs. IRAs are also readily available online and at most financial institutions. Lack of access is not the problem.

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[1] SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over $2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over $16 trillion in assets and managing more than $62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit http://www.sifma.org.

(2) **Factors Other Than Access May Be Creating Underlying Obstacles to Savings**. With a variety of options already available, factors other than access may be keeping people from saving. It is important that any proposal address some of the underlying issues with retirement under-saving, including competing financial needs and a lack of understanding about the importance of saving over time. In fact, an AARP survey found that "No money left after paying bills" was the leading obstacle to retirement savings. Additionally, a survey by the California Secure Choice Retirement Savings Investment Board concluded that "the leading reasons for not saving more for retirement are not making enough money or needing to pay off debts." Indeed, not earning enough, paying off debt, unexpected expenses and a focus on helping family were the top four responses, affecting 74% of all respondents. A city-run auto IRA program would not address this.

(3) **A State-Run Plan Could Encourage Employers with Strong Retirement Plans to Re-evaluate, Thereby Lowering Overall Retirement Savings**. We are very concerned that a city-run plan could encourage employers with strong existing plans to drop their current plan in favor of a lesser alternative. Employers often contribute up to 6% of an employee's gross salary directly to his or her retirement account. A government program could curb the use of employer contributions if employers with strong retirement savings plans move to the government plan for ease of compliance, lower costs or other reasons – ultimately leading to lower account balances. In fact, a market feasibility analysis of the proposed state-run plan in Connecticut showed that only 48% of employers with existing plans would not consider moving to a state-sponsored plan.

(4) **The Cost of a Proposed Solution.** States have estimated that the start-up or up-front financing costs of a program that includes a state-run auto-IRA can range from $8 million to $170+ million dollars, depending on the type of plan and the size of the state. Conversely, the marketplace start-up costs in Washington State, described below, were roughly $500k and the estimated cost of the Utah tax credit, as well as certain education initiatives that some states have explored, would all have a lower fiscal impact.

(5) **When Assessing Cost, it is Important Not to Overstate Projections.** Oregon's plan (OregonSaves) is the operative state-run, mandatory-on-employer, auto-IRA that is furthest along. It has been operating for over two years and all covered employers with 20+ employees are currently required to participate. In the program's initial feasibility study, the state estimated a participation rate between 75 and 80%. A recent analysis puts the participation rate at 62%. The study estimated annual contributions over $600m/year by Year 3. Only $12m has been saved as of this past February – with estimated start-up costs of $11m. Finally, the feasibility study estimated that the plan's budget would reach net positive after 7 years. Current estimates – if met – predict that it may take up to 10 years. The state even had to re-evaluate the number of potentially eligible workers.[2] On top of this, the program only includes about $25m to-date, far short of their initial projections. Any errors in the starting estimates of a proposed program could significantly understate the cost to the state, the length of time the state would need to break-even or the length of time needed to develop a self-sustaining program.

(6) **Potential Liabilities for the State.** ERISA is a vital investor protection law that has been effectively protecting investors since the 1970s. It also places certain legal and regulatory burdens on plan sponsors (in this case, the City of New York). For many years, states have found these regulations too burdensome to move forward with a plan. To help facilitate the creation of a certain type of state-run plan, the DOL finalized a rule in 2016 that gave states a limited safe harbor from ERISA. Citing investor protection and other concerns, Congress repealed the rule in 2017.

[2] *See:* Oregon's initial feasibility report, and updated feasibility report presented to the program's Board in March 2018, an analysis of the plan by the Boston College Center for Retirement Research and the February 2019 update shared by the Board.

As such, states or cities with qualifying plans – as Int. 888 could create – will be subject to all the federal requirements. They may face penalties in administrative actions or be civilly liable for violating federal law, including failing to comply with document production deadlines and other obligations. While these types of lawsuits are unlikely in the first several years of the program, the liabilities could be massive. On top of these liabilities, the city may also be subject to other litigation challenges around the scope or validity of the law itself, such as the settled case in Oregon[3] or the ongoing challenge in California.[4] In fact, the DOL itself has stated that such plans are ERISA-covered plans, that they do not fall into the 1975 IRA safe harbor and that the plan itself is preempted by ERISA.

Conversely, the plans in other states (e.g., New York, Washington State, New Jersey, Massachusetts and Vermont) have faced no such challenges.

(7) **Potential Harm to Participants.** Most concerning of all is that such a plan for private sector workers could pose risks to savers. The city should consider the value of the protections afforded by ERISA – particularly to women, children and heirs of deceased account holders – and what is potentially lost in a non-ERISA plan.

A city-run auto-IRA program could also harm investors who have IRA eligibility issues – especially when taxpayers are being auto-enrolled in Roth IRAs. There are several (often complicated) reasons why someone might be ineligible to contribute to such a plan, including having a spouse with access to a workplace plan or being married and filing taxes separately. For this reason, it is highly likely that a good number of workers auto-enrolled in a Roth IRA, as proposed by Int. 888, could face IRS penalties for these contributions through no fault of their own.

In addition, Bankrate recently reported that 60% of people couldn't handle a $1,000 unexpected expense without borrowing money or going into debt. A city-run plan should consider how to make sure workers understand that an emergency savings account takes precedence over retirement savings, particularly if lack of emergency savings results in savers taking on additional debt or paying significant early withdrawal penalties.

(8) **A Wide Variety of Possible Solutions Exist.** As previously mentioned, there are a wide variety of potential solutions to the retirement savings crisis which we urge you to consider. For instance:

- In May 2015, Washington State enacted and funded the first voluntary small business retirement plan "Marketplace" in the nation, which works with private providers and establishes a web-portal structure to connect private sector employers with qualifying plans. This program officially launched on March 19, 2018 and is available at www.retirementmarketplace.com. New Jersey also authorized a similar plan;
- Vermont enacted a law authorizing the development of a multiple employer plan;
- Massachusetts has enacted a 401(k) plan for employees of small non-profits;
- New York State has authorized[5] the creation of a voluntary-on-employer IRA program; and
- Utah has offered a tax credit for employers that provide retirement savings plans to their employees.

[3] Wealth Management, "First state run retirement plan faces legal challenge," October 2017. Available at: http://www.wealthmanagement.com/retirement-planning/first-state-run-retirement-plan-faces-legal-challenge.
[4] Howard Jarvis Taxpayers Association v. the California Secure Choice Retirement Savings Program, ED-CA, No. 2:18-cv-01584-MCE-KJN.
[5] See pg. 7, Article 43.

The above plans all provide greater protections for savers, encourage (as opposed to forbidding) important employer contributions, are consistent with basic principles of saving (such as establishing an emergency savings before a retirement account which limits access to funds), critically do not auto-enroll workers in programs for which they are ineligible, and/or would create substantially fewer liabilities and costs for the city.

OREGON STATE TREASURY | OREGON COLLEGE SAVINGS PLAN | OREGON ABLE SAVINGS PLAN | oregonsaves

WRITTEN TESTIMONY OF
MICHAEL PARKER
EXECUTIVE DIRECTOR, OREGON SAVINGS NETWORK
SUBMITTED TO
THE COUNCIL OF THE CITY OF NEW YORK
COMMITTEE ON CIVIL SERVICE AND LABOR
SEPTEMBER 23, 2019

INTRODUCTION

Members of the Committee on Civil Service and Labor:

My name is Michael Parker and I am the Executive Director of the Oregon Savings Network at the Oregon State Treasury. The Network focuses on promoting the financial security of all Oregonians, including retirement savings.

In 2017, Oregon launched the first-in-the-nation auto-IRA program for private sector workers. OregonSaves was created in response to our state's and nation's retirement savings crisis. According to the National Institute for Retirement Security, the gap between what's saved and what's needed is estimated to be at least $6.8 trillion nationally.[1] At the same time, more than half of the private sector workforce in the United States lacks access to an employer-sponsored retirement savings plan at work. In Oregon alone, with a working age population of 1.8 million, there were an estimated 1 million private sector workers without such access. And that matters, because research by the AARP shows that workers are 15-times more likely to save if there is an option to do so at work.[2]

I am pleased to report that the program works and has already achieved significant success in its initial roll out. Tens of thousands of Oregonians, many of whom have never saved before, are participating at ever-increasing levels.

[1] https://www.nirsonline.org/wp-content/uploads/2017/06/retirementsavingscrisis_final.pdf

[2] https://www.aarp.org/content/dam/aarp/ppi/2017-01/Retirement%20Access%20Race%20Ethnicity.pdf

350 Winter Street NE, Suite 100 | Salem, Oregon 97301
503-373-1903 | OregonSavingsNetwork.com

3,200 employers have started submitted payroll contributions for their employees;

50,000 accounts have been established for new savers;

$30 million has been saved in just two years;

Average monthly contribution rate is $126 per month;

Total monthly contributions are nearly $4 million, and increasing every month

Participation rate continues to hold steady at 70 percent.

What is OregonSaves?

OregonSaves is an easy, automatic way for Oregonians to save for retirement at work. Workers at an employer that does not offer a qualified retirement plan can automatically enroll and start saving into their own personal IRA.

Oregon employers that do not offer a retirement savings option are required to offer OregonSaves to their workers. Participating workers contribute to their IRA with every paycheck, and those IRAs are tied to the worker, ensuring that what a worker saves is portable and will always remain under their control. Workers can opt out if they want, but most are staying in—about 3 of every 4 eligible workers.

Based on early demographic data, two-thirds of workers age 35-44 choose to participate in OregonSaves when they work at a facilitating employer.[3] This means OregonSaves is laying a foundation for a long-term culture shift, in which saving early and throughout your career becomes the norm.

How does it work?

OregonSaves launched its pilot phase in July 2017 and began operating statewide at the beginning of 2018. The statewide rollout will continue in waves through 2020, which is the timeline for small firms with four or fewer workers. However,

[3] http://crr.bc.edu/wp-content/uploads/2018/12/IB_18-22.pdf

many employers see the benefits of OregonSaves and aren't waiting to register. Employers of any size can enroll at any time ahead of their registration date, and nearly 2,000 have already done so.

The program is also open for voluntary enrollment by individuals, including the self-employed, gig economy workers, and those whose employers are not required to facilitate OregonSaves.

OregonSaves is adding approximately 1,000 savers every week, and we anticipate that volume to increase over the next few years, as small businesses join the program in the final waves of the roll out. The estimated total of eligible workers could be as large as 400,000-500,000.[4]

The participation rate of eligible workers has remained steady at around 72 percent, consistent with the market research analysis completed in 2016,[5] which estimated opt-out rates of 20 to 30 percent. And, there is potential for opt-out rates to drop over time: data from the United Kingdom's NEST program, a similar defined contribution workplace retirement plan with automatic enrollment, show the opt-out rate dropped by almost 50 percent over time.[6]

Workers automatically enrolled in OregonSaves utilize a standard set of options designed to reduce the stress and decision paralysis often ascribed to individuals enrolling in retirement savings plans. The default savings rate and account type for OregonSaves is 5 percent of gross pay into a Roth IRA, with an average savings rate currently around 5.5 percent.

We chose a Roth IRA as the standard account type because workers can withdraw their contributions at any time without penalty. This is an important design feature for new savers, many of whom lack emergency savings to weather unexpected expenses.

Additional standard design features include depositing the first $1,000 saved into a capital preservation fund. This serves a dual purpose: first, it keeps our participants away from market volatility in the early months when they are new to the program. Second, it ensures that if a worker is automatically enrolled and decides soon

[4] https://www.oregon.gov/retire/SiteAssets/Pages/Newsroom/ORSP%20Market%20Analysis%2013JULY2016.pdf

[5] https://www.oregon.gov/retire/SiteAssets/Pages/Newsroom/ORSP%20Market%20Analysis%2013JULY2016.pdf

[6] http://www.nestinsight.org.uk/wp-content/uploads/2018/06/How-the-UK-Saves.pdf

thereafter to withdraw from the program, they can quickly access all contributed funds. Contributions above $1,000 automatically flow into a target date fund based on the participant's estimated retirement age.

Finally, the standard design includes an automatic escalation of 1 percent each year until the contribution rate reaches 10 percent. Almost 10,000 OregonSaves participants had their first auto-escalation on January 1 this year, and we are happy to report that 90 percent of participants who auto-escalated made no changes to their contribution rates. In fact, a number of participants used the reminder as an opportunity to increase their savings rate even further.

Employer Facilitation

Facilitating OregonSaves is free for employers. Program costs are covered by fees on the IRA account assets.

We constructed the program to limit the time employers spend facilitating the program. Employer interaction with the program includes the following:

First, after employers are notified of the program, they are required to go online and register with the state to facilitate the program or exempt out because they already offer some type of retirement plan.

Once registered, the employer is prompted to provide basic information about each worker so OregonSaves can contact individuals to set up their accounts or obtain opt-out forms.

Beginning 30 days following worker enrollment, employers begin transferring contribution amounts to the individual IRAs. Employers using a payroll service provide instructions to their payroll provider to initiate these transfers. Employers without a payroll service handle these transfers as they would any other deduction from an employee's pay. Employers and payroll providers tell us this adds 10-15 minutes to their payroll each pay period.

Program Changes for Employers

For the past year, we have also been collaborating with some of the nation's largest payroll providers in an attempt to further streamline the administrative process. It is our hope that by laying this groundwork early, payroll providers and third-party provider platforms will automate communication and data transfer with us, further reducing the employer's role and in some cases eliminating their responsibilities entirely.

Public Support

The public overwhelmingly supports OregonSaves. Employers say it is easy to sign up workers, and based on a recent public survey by DHM,[7] the level of support has actually increased in the first year. That poll found an astounding 82 percent of people support OregonSaves. They know it is the right approach, and that it will improve savings, making Oregon stronger, today and in the long run.

Conclusion

OregonSaves is already succeeding and achieving the goal of improved access to retirement savings. Workers and businesses across Oregon express strong support and agree about the need for the program.

The success of OregonSaves will have long-term positive implications for the savers and for Oregon. Thousands of Oregonians will save significant amounts of money for years to come as OregonSaves is phased in statewide. Every person is different and their retirement needs will vary, but OregonSaves and the ability to save is already improving our business climate, and is already increasing the long-term financial stability of thousands of Oregonians.

[7] https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2018/oregon-retirement-savings-oregonsaves.doi.10.26419-2Fres.00248.001.pdf

The First State Auto IRA Is Up, Running, and Working — So Why Do Some Business Groups Want These Plans to Fail?

As we go to press, a leading business trade group, backed by faulty legal "advice," is aiming to kill state automatic individual retirement accounts (IRAs). Their immediate target is OregonSaves, which launched the first such pilot program this summer, with similar programs in development in Illinois, California, Maryland, and Connecticut. (Full disclosure, my firm is working with a number of these states.)

In a nutshell, auto IRAs are a way for in-state employees at some private sector companies that don't offer a 401(k) or other retirement plan to contribute a portion of their pay to a Roth or traditional IRA curated (but not operated) by a state-appointed board. In the Oregon program now operating, 5 percent of eligible workers' pay is automatically directed into the savings program — although workers can opt out entirely, choose a different savings rate, or withdraw their savings at any time, without penalty on the principal. (Depending on circumstances, there may be a federal tax penalty on the early withdrawal of investment earnings.) Although Oregon is the steward supervising the program and the employers serve as a conduit for fund contributions, the auto IRAs themselves are administrated entirely by a team of a private sector and professional recordkeeper, trustee, custodian, and money manager.

The results so far? Oregon's first two pilot programs have enabled 1,000 employees in mostly micro and small businesses to set aside $200,000 in retirement savings in just a couple of months. The employee opt-out rate is around 30 percent; low enough to show the program is being well-received but high enough to show that those not wishing to save have had no trouble disengaging. As the program officially took effect statewide on November 15 for businesses with 100 or more employees and no retirement plan, thousands more are benefiting. That isn't surprising; a decade of experience with 401(k) plans, along with research by numerous behavioral economists, including 2017 Nobel Laureate Richard Thaler, clearly demonstrates that auto enrollment and payroll withholding are extremely effective tools for nudging people to act in their own interest, while also fully protecting their right to make their own decisions.

Until now, critics have tried to argue that state auto IRAs are really ERISA-regulated pension plans and, thus, subject to complex reporting, disclosure, and fiduciary rules. They also claim that mandating certain employers to make the program available amounts to unlawful state interference with federal retirement policy set out in the Employee Retirement Income Security Act (ERISA). However, a 1975 US Department of Labor (DOL) safe harbor provides that a payroll deduction IRA is not an ERISA plan, as long as employee participation is completely voluntary and the company does not contribute to, endorse, or get kickbacks from the program. Every state auto IRA is designed to comply with this safe harbor.

The latest legal attack is easily brushed aside: OregonSaves IRAs are not "real" IRAs under Internal Revenue Code Section 408 requirements and, thus, do not qualify for the DOL safe harbor. That would be true only if the IRA monies were held by the state, because by law only an insurance company, bank, or approved non-bank custodian can maintain an IRA. In fact, Oregon's role is as a facilitator. The IRAs themselves are maintained and trusteed by Ascensus, and all assets are held by The Bank of New York Mellon in custody — both qualified and well-respected independent financial institutions — and fully compliant with tax code rules.

Among the other legal objections around the DOL safe harbor is that automatic enrollment in any payroll withholding IRA, even with advance notice and an easy opt-out, is merely voluntary but not "completely voluntary" for the employee, as required by the 1975 DOL safe harbor. Even if there was a semantic distinction, the clear and simple process for employees to opt-out, withdraw their savings, or change their rate of deduction at any time without penalty is as voluntary, completely or otherwise, as an affirmative election.

Granted, the DOL in 2016 did state that auto enrollment IRA contributions were not "completely voluntary" and, accordingly, added a layer of safe harbor protection extended specifically to state-based IRA payroll withholding programs. However, that ruling became moot when Congress subsequently revoked the new safe harbor under the Congressional Review Act. By law, the safe harbor issue is now considered a complete "do-over" — as if the 2016 DOL guidance on the voluntariness of auto enrollment never happened.

It should be noted that the DOL had misconstrued a well-established benefit enrollment technique and that no case law has found automatic enrollment *not* to be voluntary, completely or otherwise. (Opponents to the Oregon program have cited a court case involving an opt-out approach for parents to choose whether to enroll their children in a same sex or coed public school, but to apply it to payroll withholding is absurd.)

The latest legal attack also alleges that employers have too much control and involvement in Oregon's auto IRAs to satisfy the 1975 DOL safe harbor. In fact, Oregon employers have *zero* say in the program's default contribution rate, the type of IRA (Roth or traditional), the plan investments, selecting service providers, or the withdrawal and distribution rules, to name a few. Rather, the employer's only responsibility is withholding and delivering its employees' payroll contributions to the outside professional IRA administrator. (Ironically, private employers have significantly *more* decision-making power in a regular, non-ERISA payroll program, because the employer must decide to offer the program, choose the vendor, and establish an enrollment process.)

The 55 million employees nationwide who currently lack access to any savings vehicle at work, and their employers, deserve better than to have the only simple, inexpensive, and workable program currently available stymied by factually inaccurate and incorrect legal reasoning.

The views set forth herein are the personal views of the author and do not necessarily reflect those of the law firm with which he is associated.

David E. Morse
Editor-in-Chief
K & L Gates LLP
New York, NY

Maryland$aves

11350 McCormick Road
Executive Plaza III, Suite LL12
Hunt Valley, MD 21031

marylandsaves.org
(410) 403-2782

Maryland Small Business
Retirement Savings Board

September 23, 2019

Comments on NYC INT 0888 & 0901

Hon. Joshua Gotbaum, Chair
Maryland Small Business Retirement Savings Board

To the members of the New York City Council,

Thank you for the opportunity to submit testimony about your bills to create a retirement savings program for those whose employers don't offer one. Efforts like the one you're considering, which have been already adopted by several state and cities, could mean the difference between security and poverty in retirement for tens of millions. If adopted nationwide, they would represent the greatest improvement in retirement security since the adoption of Social Security and Medicare.

Maryland is one of the first states to enact an automatic payroll savings program to help these workers. The Maryland Small Business Retirement Savings Board and Trust ("Maryland$aves") was designed by a legislative commission, passed on a bipartisan basis and signed by Governor Hogan in 2016. I chair the Board[1], however I should note that my comments represent only my own personal views.

The genius of these programs is that they reach employees of small businesses and non-profits that otherwise refuse to offer a retirement savings plan. The objections these operations face in setting up a retirement plan can be real: they don't have the funds either to contract with a financial firm or make contributions, and they don't want the reporting and legal responsibilities that come with running a plan under federal law.

The program you're considering solves these problems by limiting the costs and eliminating the legal obligations. Rather than spending thousands of dollars to contract with a private financial firm, small businesses and non-profits instead can connect their payroll systems to a low-cost professionally-managed system created by government. Since all organizations within a state or city can use the same program, connection costs and investment fees are much, much lower than they otherwise would be. Furthermore, as more such programs are set up, various state and city programs will be able to combine and lower costs further.

The consequences of these programs can be profound improvements in retirement security. The Employee Benefits Research Institute estimates that more than 40% of Americans will run out of both Social Security and their retirement savings. Overwhelmingly, these are people who don't have retirement savings because it wasn't done automatically from their paychecks. If everyone had the opportunity automatically to create a retirement nest egg, millions would be better off.

I understand that you will have many witnesses who are knowledgeable about these important programs, so I will not spend more time explaining their benefits. If you or your staffs have specific questions about how these programs work or about the issues involved in setting them up, I and my colleagues from Maryland$aves are more than happy to provide advice. Please contact John Wasilisin, Executive Director, at JWasilisin@MarylandSaves.org.

Possible Changes

The bill covers both full-time and part-time employees and requires employer participation unless "all eligible employees" are offered a retirement plan (§20-1406(c)). Since few small businesses offer a retirement plan for part-time employees, this bill would require many more businesses to enroll than has been the case in other states. You may want to limit the requirement to employers who don't offer a plan to their full-time employees.

As written, the bill would apply to all businesses/non-profits that both employ more than 10 people and don't offer some form of retirement savings plan. As we studied small businesses in Maryland, we discovered that some small businesses continued to pay their employees manually. (A survey conducted for Maryland$aves suggests this is about 25% of such businesses.) As a result, our bill applies only to businesses that have some form of automated payroll processing. Those who write checks manually are exempted.

The bill also contains a requirement, §20-1404(a), that it conform to the regulations of the US Department of Labor (DOL). Unfortunately, DOL has a history of varying both its interpretation of federal law and its regulations, so a requirement to conform to them is "a moving target". Most states instead simply require that their program be consistent with federal law.

Program Design Issues

The bill imposes some requirements on the program that will make it either difficult or expensive to offer:

- It requires that the default contain a separate escrow, so that people can withdraw their money without penalties. This can be done easily with a basic Roth IRA account and doesn't need a separate escrow account.

- It requires that people have the option of taking their funds as a single lump-sum or as an annuity. This is a feature that we in Maryland are exploring carefully. However, most observers believe that, unless annuitization is required, so few people will choose it that the cost of the annuity will be prohibitive.

In general, you might consider giving the board more discretion to design the program according to the needs of New Yorkers and the evolving ability to the financial services industry to provide services automatically and at lower cost.

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[1] The 11-member board includes ex-officio the State Treasurer and the Secretary of Labor, Licensing & Regulation, as well as 9 members appointed, 3 each, by the Governor, the Speaker of the House of Delegates, and the President of the Senate to staggered terms.

DAVIS & HARMAN LLP

AMERICAN BENEFITS COUNCIL

September 24, 2019

By email (mbutehorn@council.nyc.gov)

Committee on Civil Service and Labor
New York City Council
c/o Malcom M. Butehorn
Senior Counsel
250 Broadway, 14th Floor
New York, NY 10007

Re: Committee on Civil Service and Labor Hearing on INT 888 and INT 901 Proposed Mandatory City-Run Auto-IRA Program

Dear Committee on Civil Service and Labor:

Thank you for the invitation to testify at the hearing on September 23, 2019 regarding proposed legislation (Int. No. 888 and Int. No. 901), which would create a mandatory city-run auto-IRA retirement savings program. I am sorry I was unable to attend the hearing, but I am pleased to submit these written comments. This letter is sent on behalf of myself and our client, the American Benefits Council ("Council"), which has actively engaged on similar programs adopted or under consideration in other states and cities.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees across the country, including New York City. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans that cover more than 100 million Americans.

I am a partner of Davis & Harman LLP, a law firm in Washington, DC that specializes in, among other things, retirement and savings policymaking. I have written and spoken about these state and city auto-IRA programs for many years, and, for example, I have testified in connection with the recent OregonSaves rulemaking.

The Council and its members have long supported both public and private efforts to expand access to retirement savings opportunities for workers. Due to the voluntary nature of the United States' employment-based retirement system, the Council has worked closely with Congress and the federal agencies over the years to reduce the administrative burdens and costs of sponsoring a retirement plan in order to encourage employers to offer (and to continue to offer) plans to their employees. Although we understand the concerns that have led several states and cities to explore and/or pass statutes creating a state- or city-run plan, we are nevertheless concerned that the implementation of these plans, unless done with care, could undermine the incentive for employers to adopt and maintain a retirement plan with employer contributions, higher contribution limits, and far more participant protections.

Appropriate features of a state- or city-run auto-IRA program.

Because our goal in working with states and cities looking to implement these programs is to ensure that they do not undermine the incentive to adopt and maintain employer-based, federally regulated retirement plans, we consistently advocate that these programs should have the following features:

- The state or city law should not impose any requirements on employers that already offer a plan. Therefore, the mandate should not apply to an employer that offers a plan with respect to employees that have not met the plan's eligibility requirements.
- The mandate to participate in the state or city program should not apply to an employer whose plan does not contain particular features (such as a particular type of investment), all of which are extensively regulated by federal law.
- The program should minimize the reporting burden on employers that are exempt from the mandate because they already offer a plan. We recommend that administrators of these programs rely on the Annual Report (Form 5500) filed with the U.S. Department of Labor to determine whether an employer already offers a plan.
- The savings vehicle should be an IRA in order to maintain the incentive for a business owner to adopt a full retirement plan with higher contribution limits.

We recommend delaying further action while the state implements its auto-IRA program.

On April 12, 2018, the state of New York enacted the Secure Choice Savings Program, which will be administered by the state's deferred compensation board. The program will be voluntary for employers that have not offered a qualified retirement plan in the preceding two years. The program will be available to employers throughout the state, including in New York City.

Given the enactment of the state program, we strongly recommend that further action by the New York City Council be delayed. The state program will provide an opportunity to experiment with an auto-IRA program without a new mandate. Inconsistent requirements from state to state and within the same state could be confusing for workers, and may result in anomalies that would best be avoided by uniformity in the applicable rules. This is particularly a problem for New York, because the metropolitan New York City area extends outside city borders and into multiple other states.

Another reason that it is prudent to delay implementation is that the very legality of these mandatory programs is the subject of litigation in California.[1] As we assume you are aware, the

[1] Howard Jarvis Taxpayers Assoc. v. California Secure Choice Retirement Savings Program, No 2:18-cv-01584-MCE-KJN (E.D. Cal.).

U.S. Department of Justice, with co-counsel from the U.S. Department of Labor's Office of the Solicitor, filed a "statement of interest" in this litigation on September 13, 2019. The United States expressed in this statement of interest its view that (a) the CalSavers Program (which is very similar to the mandatory program you are considering) does not satisfy the Department of Labor's safe harbor for IRA savings programs, and (b) the Secure Choice Act, which imposes the mandate on employers, is preempted by Employee Retirement Income Security Act of 1974 ("ERISA").[2]

We recommend the proposal exempt all employers that offer a retirement plan.

If, after the state-run program is up and running, the New York City Council determines it still makes sense to be move forward with the proposal, there is a critical clarification that is necessary to the legislation: ensuring that employers that offer a retirement plan to their workers are fully exempt from the mandate.

For more than 40 years, employers who sponsor a retirement plan have been subject to a single federal statutory and regulatory regime under ERISA. One of the fundamental reasons that Congress had for passing ERISA was to ensure that employers who voluntarily sponsor a retirement plan are not subject to a multitude of rules under state laws that would inevitably vary from state to state. This framework has enabled the current retirement system to successfully reach millions of employees across the country. It is critical that states and cities do not take action at the expense of employees who are already participants in an ERISA-covered plan. ERISA-covered plans offer several important advantages over state and city auto-IRA programs, including, as noted above, the opportunity for employer contributions, higher contribution limits, fiduciary oversight, and more participant protections than are available in an IRA.

Every state that has enacted a mandatory auto-IRA program has provided an exemption for employers that already sponsor a retirement plan. Your proposal also has an exemption, but we recommend a critical clarification that will reduce burdens on employers: provide that an employer is exempt from the mandate if the employer offers a retirement plan, even if that plan does not cover 100% of its employees.

Federal law already stringently regulates the design of retirement plans. The various nondiscrimination rules in the Internal Revenue Code require that the plan's eligibility and benefit rules do not favor highly compensated employees, and such rules impose restrictions on eligibility conditions in the plan.[3] In addition, employers may impose age and service requirements within certain parameters (generally age 21 and one year of credited service). Consistent with these restrictions, it is unusual for a retirement plan to be offered to 100% of all

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[2] The proposed legislation in New York City prohibits establishment of the program if it would "create additional material monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers or employees, except to the extent that assumption of such liability is required to ensure that the program is not an 'employee pension benefit plan' or a 'pension plan' for purposes of [ERISA]." At a minimum, it appears the City could quickly find itself the subject of litigation, given the position expressed by the Department of Labor, which has interpretive jurisdiction over ERISA preemption.

[3] See, for example, Internal Revenue Code sections 401(a)(4), 401(k)(3), 401(m), 410, and 416, and the many pages of Treasury regulations that interpret them.

employees at all times, starting from the date of hire. Oftentimes, an employee who is not currently eligible for participation in the plan will become eligible in the future, either due to meeting the plan's service requirement or due to moving from an ineligible position to a position eligible for participation. Although employers are free to impose less restrictive service requirements for eligibility in their qualified plans, federal law does not mandate that they do so.

These federal requirements appropriately balance the administrative costs of enrolling every employee from day one with ensuring a plan adequately covers those employees who need retirement coverage with their job (particularly full-time and long-term employees). Seasonal and part-time employees are often less likely to wish to save for retirement through an employer plan, either because they are younger and saving for other purposes, such as for an emergency fund or education, or because they have a spouse who is saving for retirement. (Such employees can, of course, save in an IRA.) In addition, federal policy regarding the eligibility of such seasonal and part-time workers continues to develop and is receiving increased attention at the federal level, especially in light of the growing number of "gig" economy workers.

It appears your proposal would, unlike any other similar proposal we have seen, require a covered employer to participate in the city-run program if even a single employee is not eligible for the employer's plan. In particular, the legislation requires a "covered employer" to offer its "eligible employees" the city-run retirement program. "Eligible employee" is defined as an employee who is 18 years of age or older, employed for compensation in the city by a "covered employer," and "to whom a retirement plan has not been offered by the covered employer in the preceding two years." "Covered employer" includes an entity which, among other criteria, "has not offered, in the preceding two years, to its employees who satisfy the definition of 'eligible employee' in this section, a retirement plan." The language is somewhat circular, but it appears the proposal in its current form imposes the mandate on an employer that has even a single eligible employee not eligible for the employer's plan. We expect this would mean virtually every employer in New York City would be affected by this proposed legislation.

If your proposal is not clarified, it would create new, more stringent design standards that employers must either meet or be subject to significant monetary penalties. The proposal would thus undermine the value to employees of the employer's plan meeting the already rigorous federal standards. Further, employers with employees enrolled in both the program and the employer's own plan would be forced to take on additional administrative responsibilities to monitor and switch employees between the city-run IRA program and their own plan.[4] Congress sought to prevent this very result through ERISA § 514, which preempts "any and all" state laws that "relate to" an employer-sponsored pension plan.

The legislation requires that the newly created board certify that the program is not considered an employee pension benefit plan under ERISA. Unless your proposal is clarified, it would have the effect of interfering with the plan design of ERISA-governed plans. Clarifying that all employers that sponsor a retirement plan are exempt from the mandate would therefore ensure that the proposal is consistent with, and not preempted by, federal law.

[4] In addition, many employees will be in the city-run program for very brief periods, meaning all enrollees will bear the cost of these tiny balances.

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On behalf of myself and the American Benefits Council, thank you again for the opportunity to provide written testimony in connection with the hearing. Please do not hesitate to contact me (202-347-2230 or mlhadley@davis-harman.com) or Lynn Dudley at the American Benefits Council (202-289-6700 or ldudley@abcstaff.org) if you have any questions.

Sincerely,

Michael Hadley

Testimony of Hank Kim, Esq.
Executive Director and Counsel
National Conference on Public Employee Retirement Systems (NCPERS)

Before the New York City Council Committee Civil Service and Labor
Public Hearing on Retirement Security for All
September 23, 2019

Good morning. My name is Hank Kim and I am executive director and counsel of the National Conference on Public Employee Retirement Systems (NCPERS). I would like to thank Chairman Daneek Miller for convening this important hearing of the Committee on Civil Service and Labor. Chairman Miller and Council Member Ben Kallos deserve our thanks for putting the spotlight on the urgent need to create retirement savings programs for workers who currently lack them. Their forward-looking legislative proposals to make “Savings Access New York” a reality deserve prompt and serious consideration.

I am pleased to speak on behalf of NCPERS, the largest trade association for public sector pension funds. We represent more than 500 funds throughout the United States and Canada, including all five of New York City’s pension funds.

NCPERS is a unique non-profit network of public trustees, administrators, public officials, and investment, actuarial and legal professionals. Collectively, these entities manage $3 trillion in pension assets. Through our members, we are the voice of seven million retirees and nearly 15 million active public servants — including but not limited to firefighters, law enforcement officers and teachers.

Since our founding in 1941, NCPERS has worked tirelessly to promote and protect pensions by focusing on advocacy, research and education for the benefit of public sector pension stakeholders. But our interest is not limited to public sector employees, because we recognize that retirement security for ALL workers is vital to our national well-being. Therefore, we are strong advocates of providing ALL workers with access to retirement savings opportunities, and that is what brings me here today.

For several years now, New York City has been in the vanguard of initiatives to help private-sector workers save for retirement. Several approaches and pieces of legislation have been proposed and considered over the past four years.

New York’s experience is a microcosm of a trend that is playing out across the nation: Cities and states are recognizing that millions of workers are inadequately prepared for retirement. These governments know that they have an unprecedented opportunity to help private-sector workers help themselves. By helping workers prepare for retirement, cities and states can protect the economic security of their residents. State and local governments are increasingly concerned that if they fail to take up the mantle, they risk bringing added stress on social welfare programs and reducing the tax base when workers reach retirement.

The Retirement Crisis is Real

Make no mistake about it: The United States today faces a very real retirement crisis. The current shortfall in retirement savings among U.S. workers has been pegged at approximately $4 trillion by the Employee Benefits Research Institute[1] and we have seen estimates as high as $14 trillion by others. It is an understatement to say that Americans are worried about their ability to achieve financial security and make it last through retirement. The minority of hard working Americans who have pensions to look forward to may not live large in retirement, but they will enjoy a basic level of security.

An analysis of U.S. Census Bureau data reveals that the median retirement account balance among working Americans is zero.[2] That's right, zero. That's what happens when 57 percent of Americans do not own any retirement account assets in a 401(k) plan or individual retirement account. For those nearing retirement, it's also a grim outlook. Some 68% of individuals 55 to 64 only have retirement savings of less than one year's income, which they'll have to make last for decades.

A Way Forward

Employers have traditionally provided retirement benefits as a way to attract and retain the workers needed to deliver goods and services. But the past 40 years has seen dramatic change in the shape and structure of retirement savings in America. Corporate pension plans, where they existed at all, have gradually gone the way of vinyl records, Kodachrome film, and landlines. Just 13 percent of private-sector workers have a traditional pension plan, down from 38 percent in 1979. And 401(k) plans, which were held out as a superior alternative to traditional defined benefit pensions, have failed to deliver the desired benefits.[3]

Public pension plans, meanwhile, remain robust as a whole but are under constant, politically motivated attack and pressure, primarily because of the failure of state and local governments to honor their funding commitments.

Against a backdrop of rising anxiety, workplace change, and generational shifts, what has become known as the Secure Choice movement has taken shape. In the early years of the new millennium, policymakers and stakeholders from across the political spectrum considered how to give Americans greater confidence in their financial future. While millions of Americans participated in workplace plans, including public and private pensions and tax-deferred savings plans such as 401(k) s, millions did not.

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[1] "Retirement Savings Shortfalls: Evidence from EBRI's 2019 Retirement Security Projection Model," Employee Benefit Research Institute, March 2019.

[2] "Retirement in America: Out of Reach for Most Americans?" National Institute on Retirement Security, September 2018.

[3] Timothy W. Martin, "The Champions of the 401(k) Lament the Revolution They Started," *Wall Street Journal*, January 2, 2017.

And even among those participating, average savings rates were dangerously short of the amounts needed for a secure future. The debate quickly homed in on the workplace, particularly the small businesses that drive local economies and power innovation. The focus was on a new concept based on the individual retirement account (IRA) and called the auto-IRA.

Like the plans currently under consideration in New York City, the Secure Choice idea is to use the most effective savings method—payroll deduction—to help workers build a retirement nest egg, while states provide expertise and savings mechanisms in the form of pooled investment vehicles. Mayor de Blasio's office in January 2019 said that under the city's proposal, a New Yorker who makes the city's median salary of $50,850 per year and invests 5 percent annually while earning an average net return of 4 percent would save $146,274 after 30 years.

In September 2011, NCPERS laid out the rationale for a state-facilitated approach in a groundbreaking white paper, The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector. Summarizing the goal, we wrote, "American private-sector workers need a new choice that provides a secure yet flexible retirement program."[4]

Since that time, we have seen tremendous progress in the Secure Choice movement. Across the nation, Secure Choice programs are beginning to take shape. Oregon last year became the first state in the nation to implement such a program, called OregonSaves, in March 2018. In California, the CalSavers Retirement Savings Program was launched on a pilot basis in November 2018 and officially opened to all workers in July 2019. Numerous other states have launched programs or have them in the pipeline.

If New York were to adopt the pending proposals, it would become the first major city to move forward with the Secure Choice model. A 2016 study commissioned by the city's Comptroller's Office found that 1.5 million city residents, or 58 percent of private workers, were not covered by workplace retirement programs.

The Saving Access proposals you are considering today offer substantial potential benefits to workers. As Mayor de Blasio noted in his State of the City address in January 2019, a New Yorker who makes the city's median salary of $50,850 per year and invests 5 percent annually while earning an average net return of 4 percent would save $146,274 after 30 years.[5] We consider this a very promising step toward providing a secure retirement for New York City residents.

Recommendations

New York City is demonstrating leadership with its initiative to facilitate voluntary retirement savings by private-sector workers. The Secure Choice model, built on an auto-enrollment individual retirement

[4] "The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector." (Washington, DC: National Conference on Public Employee Retirement Systems, 2011), http://www.ncpers.org/files/2011_scp_white_paper_final.pdf.

[5] "Mayor de Blasio: Delivering on Our Promise to Make New York City the Fairest Big City in America," Office of the Mayor, January 10, 2019.

account, is the most rigorously tested proposal and should provide New York City with the tools it needs to improve retirement prospects for workers.

Indeed, New York could very well be the first city in the nation to take this bold step for workers. It is noteworthy that New York's plan would provide auto-enrollment for employees who work more than 20 hours a week, as people who work less than full-time are generally ineligible for workplace retirement benefits.

Additionally, consideration should be made of establishing an ERISA plan. Unfortunately, there is too much misunderstanding in the public sector of what ERISA is and what ERISA is not; and confusion of two related—but separate—issues of ERISA preemption and ERISA protections afforded plan participants. We believe a New York City sponsored ERISA retirement plan, like the NCPERS Secure Choice Pension proposal, has many benefits for plan participants and would avoid many of the preemption, protection, and uniformity concerns raised by other state sponsored plans.

Conclusion

NCPERS thanks the Committee for the opportunity to address the pressing issue of providing retirement security for all. We congratulate Chairman Miller, Council Member Kallos, and other legislative sponsors for their leadership in this area. We believe that through this hearing New York City is helping to show the way forward in addressing the retirement crisis our nation faces. NCPERS stands ready to assist state and local policymakers with facts, research, and expertise as they delve into policy discussions on retirement security. We invite this body to contact us should you need additional information.

REBNY
REAL ESTATE BOARD OF NEW YORK

TESTIMONY OF THE REAL ESTATE BOARD OF NEW YORK TO THE COMMITTEE ON CIVIL SERVICE AND LABOR OF THE NEW YORK CITY COUNCIL REGARDING RETIREMENT SAVINGS

September 23, 2019

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY commends the City Council for pursuing legislation to help more private-sector workers, particularly those without access to savings plans through their employer, put money away for retirement.

After a lifetime of hard-work, all New Yorkers deserve the change to retire with dignity. Although a rich body of evidence indicates that access to an employer-sponsored retirement plan is critical to worker's ability to save for retirement, too many New Yorkers don't have the ability to enroll in a retirement plan through their work. According to data released by the New York City Comptroller, over half of all private-sector workers in New York City do not have access to a workplace retirement plan. For the real estate industry, this issue is particularly acute in the construction workforce, where data indicates more than 100,000 construction workers—almost 75 percent of all private sector construction workers—do not have access to a workplace retirement plan.[i]

This data is supported by REBNY's recent experience partnering with Building Skills NY. Building Skills NY is a not-for-profit organization that helps find jobs in the construction industry for entry-level workers. In 2018, Building Skills NY placed 235 individuals in construction jobs and in 2019 has placed 214 individuals in jobs through September. Of those placed in 2019, 100 percent are New York City residents and 98 percent identify as Black or Latino.

While Building Skills NY has been very successful at placing workers, they routinely find that entry-level workers in the construction industry do not have access to retirement savings plan. Many of these workers, who frequently move between employers, struggle to afford New York City's high cost of living and without an employer provided plan do not have an easy way to save for their future.

For these reasons, we are pleased that the City Council is considering Int 0888 and Int 0901, which would collectively expand retirement savings options for workers in New York City who work for businesses that do not offer retirement savings plans to their workers. In recent years, many State and local jurisdictions have adopted innovative programs to expand access to retirement plans, including a plan enacted by the State of New York in 2018. While many of these programs have yet to be fully implemented, it is encouraging that both New York City and New York State are pursuing solutions to this challenge. Should the Council move forward with this proposal, we hope that it will be done in coordination with New York State to prevent duplicative or conflicting requirements.

Thank you for considering our views and we look forward to working with the Council on this important issue.

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CONTACT(S):
Zachary Steinberg
Vice President
Policy & Planning
Real Estate Board of New York (REBNY)
(212) 616-5227
zsteinberg@rebny.com

[i] Office of the New York City Comptroller, "The New York City Nest Egg: A Plan for Addressing Retirement security in New York City," October 2016: https://comptroller.nyc.gov/wp-content/uploads/documents/The-New-York-City-Nest-Egg_October_2016.pdf

National Association
of Professional Employer Organizations

707 North St. Asaph Street
Alexandria, Virginia 22314

T 703 836.0466
F 703 836.0976
www.napeo.org

September 25, 2019

Email Delivery to mbutehorn@council.nyc.gov

Committee on Civil Service and Labor
New York City Council
250 Broadway, 14th Floor
New York, NY 10007

Re: Int. No. 888 – In Relation to Establishing a Retirement Savings Program for Private-Sector Employees

Dear Members of the Committee:

The National Association of Professional Employer Organizations (NAPEO) appreciates the opportunity to provide written testimony in connection with the Committee on Civil Service and Labor's (Committee) September 23, 2019, hearing on Int. No. 888 (Proposal). The Proposal would establish a retirement savings program for private-sector workers in New York City.

We are writing primarily to recommend that the Proposal clarify who the "employer" is for purposes of the proposed program in "tri-party" employment situations involving a professional employer organization (PEO) because, absent such clarification, more than one individual or entity could be viewed as the Covered Employer[1] of an Eligible Employee.

NAPEO is the largest trade association for PEOs, which provide comprehensive HR solutions for small and mid-sized businesses. NAPEO represents approximately 300 PEO member companies that provide services to over 175,000 businesses employing more than 3.7 million workers nationwide. In New York, NAPEO has over 45 member PEOs who handle approximately 3 billion dollars in worksite wages annually.

Our comments below (1) describe what a PEO is, (2) explain the need to clarify the treatment of PEO relationships for purposes of the Proposal, (3) set forth NAPEO's general principles for the treatment of PEOs under programs such as those contemplated by the Proposal, and (4) offer specific recommendations for the Proposal. The clarifications we offer below are consistent with the approach that has been established for PEO relationships in connection with OregonSaves, CalSavers, and the New Jersey Secure Choice Savings Program Act. In addition, we understand that the same approach is expected to be incorporated into upcoming amendments to the Illinois Secure Choice rules.

[1] Terms not defined herein have the meaning provided in Int. No. 888 unless specified otherwise.

1. BACKGROUND ON PEOS AND THE NATURE OF PEO RELATIONSHIPS

PEOs generally provide payroll, benefits (including retirement plans), regulatory compliance assistance, and other human resource (HR) services to their clients (referred to herein as "client employers"). Client employers have on average 10-15 workers. They tend to grow faster, have lower employee turnover, and are less likely to go out of business than small businesses that do not use PEOs.[2]

In New York, PEOs are subject to state registration and other requirements under the New York Professional Employer Act, as found in Article 31 of the Labor Law.

A PEO's relationship with its client employers differs significantly from the client relationships formed by temporary agencies and so-called staffing agencies in part because ***PEOs generally assume a co-employment relationship with a client employer's workers for certain limited purposes*** such as payroll administration and contractually specified benefits.

2. THE NEED TO CLARIFY THE TREATMENT OF PEO RELATIONSHIPS FOR PURPOSES OF THE PROPOSAL'S RETIREMENT SAVINGS PROGRAM

Int. No. 888 was generally drafted with a traditional "two-party" employment relationship in mind, which consists of one employee and one employer. A two-party employment relationship is the most typical type of relationship that workers have with employers. Even workers who hold multiple jobs are generally considered to have entered into separate two-party employment relationships with each employer for whom the worker performs services.

Despite the prevalence of two-party employment relationships, there are several forms of "tri-party" employment relationships that exist in certain contexts and that cover a significant number of New York City workers. A tri-party relationship generally consists of an employee, a client business, and a third individual or entity (e.g., a temporary agency, staffing company, or PEO) that enters into a service contract with the client business. Depending in part on the type of entity involved and the specific arrangement that such entity has with the client business, either party to the service contract could be treated as the employer of the employee for certain purposes under state and federal law. The Proposal, however, does not address which entity in a tri-party employment relationship would be the responsible employer for purposes of the proposed retirement savings program.

As a result, for purposes of the Proposal and its requirements of Covered Employers, there is a need to clarify in tri-party employment relationships involving a PEO whether the client business *or* the PEO is the "employer" of a particular employee (and thus potentially a Covered Employer

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[2] LAURIE BASSI & DAN MCMURRER, PROFESSIONAL EMPLOYER ORGANIZATIONS: KEEPING TURNOVER LOW AND SURVIVAL HIGH (2014).

with all the attendant responsibilities of a Covered Employer under the Program).[3] Further, as discussed below, the manner in which the Proposal addresses this matter will have significant implications for both the retirement savings program and all parties to a PEO relationship.

3. General Principles for the Proposal's Treatment of PEOs

Unlike other tri-party employment relationships, when a PEO establishes its unique co-employment relationship with a client employer, that relationship is intended to assist the client employer with its compliance issues and the offering of employee benefits to the client's existing workforce – services that are particularly helpful to small businesses. Yet, a client employer would continue to exist and carry on its business with the same employees regardless of whether the PEO is in the picture. In other words, if a client employer terminates its contract with a PEO, the workers who were covered by the contract remain with the client employer.

As such, the most consistent and lasting employment relationship in this tri-party arrangement is the relationship that exists between the client employer and its own workers – not the PEO and such workers. It is this unique nature of co-employment (i.e., unique as compared to temporary agencies, staffing companies, and even joint employment) that necessitates the inclusion of separate rules in the Proposal for PEO relationships in order to better ensure that (1) the objectives of the Proposal are met and (2) workers and small businesses are treated consistently and equitably regardless of whether a PEO relationship is present.

NAPEO strongly advocates that the following principles be incorporated into retirement savings programs such as the type of program contemplated by the Proposal:

- **The client employer – and not the PEO – should be treated as the employer for purposes of all employer requirements under the program with respect to workers who are performing services for the client employer and who are covered by the contract between the client employer and the PEO.**[4]
- **Any program requirements that are based on the number of employees an employer has should be applied at the client employer level with respect to the workers who are covered by the contract.**
- **Client employers that offer a PEO-sponsored retirement plan to their employees should be treated as offering or providing a retirement plan for purposes of the program's requirements and employer exemptions.**

[3] A worker who is subject to a tri-party employment relationship should only be treated as having one employer for purposes of the services performed for the client business. Treating both the client employer and the PEO as employers in that context would lead to substantial confusion, overlap, and conflicting actions, and we do not believe that this would be the intent of the New York City Council.

[4] Client employers are often treated as the employer (rather than the PEO) in several other contexts, including under both federal and various states' laws.

Incorporating the above principles into the Proposal would achieve the following benefits, which NAPEO believes are strongly in the interests of both the Proposal's envisioned retirement savings program and those who would be impacted by it:

- **Treat small and new businesses equitably.** Employers that the City Council intended to be exempt would not be pulled into dealing with matters involving the Proposal's retirement savings program merely because such employers contracted with a PEO that is a Covered Employer.
- **Avoid confusion and unnecessary disruption for workers.** Employees of small businesses that begin or terminate a contract with a PEO would not be needlessly un-enrolled or re-enrolled in the program when the Covered Employer designation switches from the small business to the PEO (and vice versa).
- **Appropriately address the fundamental differences between PEO relationships and those involving a temporary agency or staffing company.** The unique nature of a PEO relationship, in which a PEO co-employs a client employer's *existing workforce*, warrants different treatment for PEO relationships than those involving a temporary agency or staffing company, which do not involve co-employment by the client business that receives the services of temporary staff.
- **Maximize retirement plan coverage for those workers intended to be covered by the Proposal's program.** An employer could not avoid being a Covered Employer by contracting with a PEO that offers a retirement plan, yet not electing to make the PEO's retirement plan available to such employer's workers.[5]
- **Reduce administrative complexity.** Depending on the PEO relationship, a client employer may retain control over certain functions and information, such as setting up payroll deductions for workers. Clarifying that the client employer is the responsible employer (i.e., the Covered Employer, if the definition of such term otherwise applies) under the Proposal will avoid many errors that would likely occur if a PEO were responsible for tasks and information that the PEO does not have access to.
- **Avoid duplicate retirement plan coverage.** A PEO that does not offer a Retirement Plan would not be required to enroll an Eligible Employee in the Proposal's program, even if the worker already participates in a Retirement Plan sponsored by the client employer, if the Proposal clarifies that only the client employer may be a Covered Employer (and not the PEO).
- **Treat the entire workforce of a small business consistently.** NAPEO's recommendation would avoid a situation in which, if a client employer does not co-employ its entire workforce, then some workers could be automatically enrolled in the

[5] Note that this benefit applies to programs that exempt employers who offer a Retirement Plan to any of their employees (as opposed to "all" employees). As drafted, we are not certain how the Proposal is intended to operate in this regard, but we note that conditioning employer exemptions on offering a Retirement Plan to "all" Eligible Employees raises several concerns not specific to PEO relationships.

Proposal's program by the PEO while other workers are not, depending on the particular situation and which entity is treated as the employer of a particular worker.

Ultimately, by incorporating the above principles, the Proposal will help provide workers and small businesses in New York City with a consistent experience and uniform access to the retirement savings program regardless of whether a small business has entered into a contract with a PEO.

4. SPECIFIC RECOMMENDATIONS FOR INT. NO. 888

NAPEO believes that the following changes to the Proposal would provide the necessary clarification for PEO relationships and help achieve the Committee's desired outcomes:

a) <u>Add definitions related to PEO relationships</u>

NAPEO recommends adding the following defined terms to the Proposal:

- Professional employer organization
    - The term "professional employer organization" has the same meaning provided in Section 916 of Article 31 of the New York Labor Law.
- Client employer
    - The term "client employer" has the same meaning as the term "client" under Section 916 of Article 31 of the New York Labor Law.
- Professional employer agreement
    - The term "professional employer agreement" has the same meaning provided in Section 916 of Article 31 of the New York Labor Law.

b) <u>Clarify the treatment of PEOs and client employers for purposes of the Proposal</u>

NAPEO recommends adding the following to the Proposal, which is the key clarification we seek for PEO relationships:

- For purposes of this chapter, an eligible employee who is performing services for a client employer that has entered into a professional employer agreement with a professional employer organization shall be treated as employed by the client employer and not by the professional employer organization.

c) <u>Add a definition of "Compensation" and specify from whom the Compensation is received.</u>

The Proposal's requirement that the retirement savings program include a default contribution rate of three percent "of an eligible employee's income" lacks important specificity. As such, we recommend the following changes:

- Add a definition of "Compensation," and replace the word "income" in section 20-1406(e) with Compensation. For example, both OregonSaves and CalSavers define Compensation under their regulations by reference to 26 C.F.R. § 1.415(c)-2(d)(4).
- Specify that Compensation means Compensation received from the Covered Employer. (This would address concerns that Covered Employers could be responsible for withholding and remitting contributions based on Compensation an Eligible Employee receives from other payors.)
- Clarify for purposes of PEO relationships that Compensation received by an Eligible Employee from a PEO under a Professional Employer Agreement is treated as Compensation received from the Client Employer.

d) <u>Clarify that the "offer" of a Retirement Plan by a Covered Employer includes the offer of a Retirement Plan sponsored or maintained by a PEO.</u>

e) <u>Clarify that a PEO may assist its Client Employers that are Covered Employers with the tasks required of a Covered Employer under the Proposal.</u>

For example, the New Jersey Secure Choice Savings Program Act accomplishes this by including the following provision:

> "Each employer is responsible for [establishing a payroll savings deposit arrangement to allow employees to participate in the program, automatically enrolling each employee that has not opted out, and depositing funds on behalf of employees into the program], but *the employer is permitted to contract with a third party, such as…or a professional employer organization, to perform those tasks on behalf of the employer*"[6] [emphasis added].

* * * * *

We appreciate your consideration of our comments on the Proposal. Should you have any questions with respect to the issues discussed herein, please contact me at 703-739-8179.

Sincerely,

Charise Johnson
Director of State Government Affairs
NAPEO

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[6] New Jersey P.L. 2019, Ch. 56.

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Appearance Card

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☒ in favor ☐ in opposition

Date: 9/23/19

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Name: ALLISON WIELOBOB

Address: 4704 Unnean Ave, DC

I represent: AMERICAN RETIREMENT ASSOCIATION

Address: WASHINGTON, DC.

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(PLEASE PRINT)

Name: Alex Gleason, NYC CLC, AFL-CIO

Address: agleason@nycclc.org

I represent: NYC Central Labor Council

Address: 275 7th Ave, 18th Fl.

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Name: Aliya Robinson

Address: 920 N ST., SW, Wash DC

I represent: The ERISA Industry Committee

Address: 701 8th St., NW, Wash DC

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Name: CAROLINE CRAWFORD

Address: Assistant Director of State & Local Research

I represent: THE CENTER for Retirement

Address: RESEARCH at Boston College

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Address: 1350 CONN. AVE, NW, STE 1050 WASHINGTON, DC

I represent: NATIONAL EMPLOYMENT LAW PROJECT

Address: "

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Name: John Ader

Address: One Centre St

I represent: NYC - DOF, MOPI

Address:

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Name: Angela Antonelli

Address:

I represent: Georgetown Univ.

Address: Washington, D.C.

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Date: 9/23/19

(PLEASE PRINT)

Name: ANDREW RIGIE

Address:

I represent: NEW YORK CITY HOSPITALITY ALLIANCE

Address: 65 W 55TH ST, #203A NY, NY 10019

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I intend to appear and speak on Int. No. ______ Res. No. ______

☐ in favor ☑ in opposition [illegible]

Date: [illegible]

(PLEASE PRINT)

Name: Lissette Velez

Address: 65-76 160 St

I represent: Myself

Address: ______

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☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Saiyl [illegible] AARP

Address: ______

I represent: ______

Address: ______

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I intend to appear and speak on Int. No. 888 Res. No. ______

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Date: ______

(PLEASE PRINT)

Name: Beth Finkel - AARP

Address: ______

I represent: ______

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