REPORT OF THE
VIRGINIA RETIREMENT SYSTEM WORK GROUP

HB 1998 Saving for Retirement [Chapter 669, 2015 Acts of Assembly]

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THE GENERAL ASSEMBLY OF VIRGINIA

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HB 1998 Saving for Retirement

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Executive Summary

Retirement security for Americans has become an area of increasing concern for both state and federal policymakers, leading to a number of programs intended to encourage saving for retirement. Behavioral finance studies indicate that a work-based retirement option tends to be an effective method of encouraging savings. In light of this, recent initiatives focus on populations that traditionally lack access to a work-based retirement plan.

In 2015, the Virginia General Assembly passed House Bill 1998 (HB 1998), which directed the Virginia Retirement System (VRS) to facilitate a working group to review various options for encouraging private sector retirement savings. As facilitator of the working group, VRS endeavored to consolidate information from various researchers, industry experts, and stakeholders to help inform Virginia's decision makers.

Recent initiatives to improve retirement savings and access have taken different forms. Among the state-based programs, there are three primary models: 1) an auto-IRA or secure choice plan; 2) a state-sponsored Employee Retirement Income Security Act of 1974 (ERISA) plan; and 3) a marketplace approach. The federal government, in addition to the long-established individual retirement account (IRA) and retirement vehicles established in the Internal Revenue Code, also recently established *my*RA accounts that allow individuals to save up to $15,000 on a tax-advantaged basis.

This report provides background and other information on retirement trends in the United States and Virginia. In addition, the report examines various state and federal models as options for the Commonwealth. In consideration of options for Virginia, the report evaluates impacts to key stakeholders and outlines potential next steps for encouraging citizens' participation in retirement savings plans. Finally, the report includes an extensive Appendix containing many resources and other relevant information relating to these programs.

HB 1998 Working Group

As the designated facilitator of the working group pursuant to HB 1998, VRS established a work group made up of state agencies, industry experts, and other interested parties. The work group held meetings to learn more about retirement savings efforts and discuss elements to be included in this report. Although all working group participants had the opportunity to review and contribute to this report, its contents are not necessarily a reflection of any individual participant's specific views. Instead, this report endeavors to reflect the collective input of the group.

Retirement Savings and Access in Virginia and Across the United States

According to a variety of resources, the average American is not financially prepared for retirement. Whether due to inadequate savings, lack of access, or other factors, Americans generally have not saved enough money to withstand financial obligations during their retirement years. The Federal Reserve estimates that approximately 31 percent of Americans nationwide may not have any retirement savings at all. This includes about 27 percent of those age 60 or older. Other data suggests that, as recently as 2013, the median U.S. household held about $5,000 of savings in a retirement account.

One reason for this trend may be the so-called "coverage gap," which describes workers who do not have access to an employer-sponsored retirement plan. Although estimates vary, the data suggests that tens of millions of American workers lack access to a retirement plan through their employer for one reason or another. Those without access include part-time workers, full-time workers who are otherwise ineligible for a retirement plan, and the self-employed.

Virginia faces issues similar to those that exist throughout the country. The Pew Charitable Trusts conducted research and found that approximately 55 percent of working Virginians have access to an employer-sponsored retirement plan, while only 44 percent participate in such a plan. An additional factor to consider in Virginia is the extent to which wage earnings may impact retirement savings behaviors. The Pew study noted that throughout most of the Commonwealth, weekly wage earnings are lower than the weighted national average. Because some may consider retirement savings to be a secondary financial priority, and even sometimes a discretionary expenditure, wages may have an impact on issues specific to Virginia.

Regardless of the cause, inadequate retirement planning and funding could impact the citizens of and potentially the Commonwealth as a whole. A path to addressing these potential issues can be complicated and multi-faceted, but there are a number of options designed to address shortfalls in retirement savings available for consideration.

Regulatory Framework

In recent years, one common obstacle impacting states that attempted to tackle these issues was the uncertain application of ERISA provisions across the various government-sponsored approaches. Fortunately, the U.S. Department of Labor recently finalized regulations specifying the application of ERISA provisions on the various models established thus far. Going forward, although assessing the impact of ERISA provisions may still be a consideration for the Commonwealth as it further analyzes various available options, the application of ERISA is now more clearly defined.

In addition to ERISA, there are a number of other legal considerations, such as federal securities laws and prohibited transaction rules. If Virginia wishes to implement an initiative to address private-sector retirement savings, the legal and regulatory framework of any initiative will be a threshold issue. To illustrate, a state needs to determine whether or not it wishes to be an ERISA qualified plan or not and take appropriate steps to remain in compliance with the applicable regulatory framework.

Initiatives at the Federal and State Levels

The federal government has long maintained initiatives to encourage retirement savings and access to retirement savings vehicles. Most of these initiatives take the form of tax-advantaged retirement savings vehicles, such as a 401(k) and IRAs, among others. More recently, other federal initiatives include the Retirement Savings Contributions Credit (i.e., the Saver's Credit) and the *my*RA program. In addition, there have been federal budget proposals aimed at encouraging retirement savings and assisting state-based initiatives.

Aside from or as a supplement to implementing a new program, the Commonwealth may wish to consider promoting awareness of these federal incentives so that Virginia's workers may gain a better understanding of the tools already available. For example, the federal Saver's Credit appears to be a relatively unknown and underutilized tax credit. Therefore, promoting awareness of the Saver's Credit may provide some working Virginians the knowledge necessary to take advantage of the credit's benefits. A similar awareness campaign may aid workers to better understand the benefits of an IRA.

At the state level, there are three primary ways in which governments recently have chosen to help increase retirement plan access and savings for private-sector workers:

- **Auto-IRA or Secure Choice plan**: a non-ERISA approach that requires employers to offer a retirement plan or automatically enroll employees (subject to opt out) in an IRA;
- **State-sponsored ERISA plan**: this includes 1) a prototype plan in which the state acts as the central administrator for individually administered ERISA plans, and 2) a single multiple employer plan that covers many different employers; and
- **Marketplace approach**: the state establishes a central exchange that serves as a one-stop shop for individuals to choose among various existing service providers and plans.

Auto-IRA plans are in various stages of progress in California, Connecticut, Illinois, Oregon and Maryland. Massachusetts has implemented a state-sponsored ERISA plan for non-profit entities. A marketplace approach is in development in Washington and New Jersey. While each of these plans maintain unique components, they generally fall into one of the three broad categories outlined above.

States that have already begun implementing programs are as follows:

- **California** – The California Secure Choice Retirement Savings Program is a secure choice (i.e., auto-IRA) plan that will fall within the ERISA safe-harbor provisions upon implementation. Generally, employers with five or more employees will be required to participate in the program, which is operated by its own board within the state's department of treasury.
- **Connecticut** – The Connecticut Retirement Security Exchange is an auto-IRA plan that will fall within the ERISA safe-harbor provisions upon implementation. Generally, employers with five or more employees that do not currently offer a retirement plan will be required to participate in the plan, which is a political subdivision of the state, operated by its own board.
- **Illinois** – The Illinois Secure Choice Savings Program is a secure choice (i.e., auto-IRA) plan that will fall within the ERISA safe-harbor provisions upon implementation beginning in 2018. Generally, an employer with 25 or more employees that has not offered a retirement plan within the preceding two years will be required to participate in the program, which is operated by its own board within the state's department of treasury.
- **Maryland** – The Maryland Small Business Retirement Savings Program and Trust is an auto-IRA plan that will fall within the ERISA safe-harbor provisions upon implementation. Generally, although there will be a deferral for new businesses and those

that offer a retirement plan available on the open market, all employers will be required to participate in the plan, which is an independent agency, operated by its own board.

- **Massachusetts** – The Massachusetts Retirement Plan for Non-Profits is a prototype plan that is subject to ERISA provisions and already underway. Generally, non-profit employers with 20 or fewer employees have the option to voluntarily participate in the plan, which is operated by the state's department of treasury.
- **New Jersey** – The New Jersey Small Business Retirement Marketplace is a marketplace approach that, upon expected implementation in 2017, will provide access to products and services that are governed by ERISA provisions. Generally, an employer with fewer than 100 employees will have the option to voluntarily participate in the marketplace, which is operated by the state's department of treasury.
- **Oregon** – The Oregon Retirement Savings Plan is an auto-IRA plan that will fall within the ERISA safe-harbor provisions upon implementation late in 2017. Generally, all employers that do not offer a retirement plan will be required to participate in the plan, which is operated by its own board within the state's department of treasury.
- **Washington** – The Washington Small Business Retirement Marketplace is a marketplace approach that, upon implementation in early 2017, will provide access to products and services that are governed by ERISA provisions. Generally, an employer with fewer than 100 employees will have the option to voluntarily participate in the marketplace, which is operated by the state's department of commerce.

Considerations and Potential Next Steps for Virginia

The HB 1998 work group made a number of observations that the Commonwealth may find useful in its efforts to improve the retirement savings shortfall and coverage gap. A key consideration is the exclusive benefit rule that governs VRS, which may limit its ability to administer a private sector retirement program. Additional consideration should be given to plan design and feasibility. Financial education is also a critical area for attention in evaluating options for the Commonwealth.

Should the Commonwealth wish to move forward, next steps for consideration may include: identifying the appropriate funding source for the selected option; analyzing the impact of federal and state regulations; and determining program administration for the selected plan, including whether an existing state agency will manage the program or if a new entity is required.

In evaluating these options for potential application in Virginia, impacts to stakeholders must be examined. For employers, impacts may include program structure, participation thresholds, responsibilities and liabilities. Similarly, employee impacts may focus on employment coverage types (full time versus part time), enrollment structure, tax effects, contribution requirements, and benefits portability. In addition, the provider and business communities may also serve an important role in the delivery of services to this population. Finally, the Commonwealth will face decisions pertaining to program funding, liability, administration and governance.

Retirement planning and adequate savings are a challenge for many citizens of Virginia, and the United States as a whole. This is especially true for those without access to a workplace-sponsored retirement savings plan. Just as other states are working to address this issue, the Commonwealth may wish to implement a program for those who do not otherwise have access to a retirement savings plan. This report details the various approaches taken by other states as well as additional information for considering the implementation of such plans. Overall, when considering an approach, decision makers must evaluate impacts to employers, employees, other stakeholders and the state. Among these considerations are the funding source, program administration, and federal and state regulations.

House Bill 1998

The 2015 General Assembly enacted HB 1998, which required VRS to convene a work group to review current state and federal programs that encourage citizens of the Commonwealth to save for retirement. The legislation also required VRS to publish a report of the work group's findings by January 1, 2017. On March 27, 2015, Governor McAuliffe approved HB 1998 as Chapter 669 of the 2015 Acts of Assembly:

> § 1. That the Virginia Retirement System shall convene a work group to review current state and federal programs that encourage citizens of the Commonwealth to save for retirement by participating in retirement savings plans including, but not limited to, plans pursuant to §§ 401(k), 403(b), 408(k), 408(p), and 457(b) of the Internal Revenue Code. Such review shall include an examination of retirement savings options for self-employed individuals, part-time employees, full-time employees whose employers do not offer a retirement savings plan, and groups with a low savings rate. The membership of the work group shall include representatives of the Virginia Retirement System, the Department of Taxation, small business, the self-employed, the Virginia College Savings Plan, and other stakeholders. The findings may include recommendations for statutory changes or amendments to the general appropriation act. The Virginia Retirement System shall report the findings of the work group to the Governor and the General Assembly by January 1, 2017, as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports, and the report shall be posted on the General Assembly's website.

Based on the legislation, VRS convened a work group including the following:

- Delegate Luke Torian (Patron of the Legislation)
- Virginia College Savings Plan
- Virginia Department of Taxation
- Virginia Secretary of Finance
- Virginia Department of Treasury
- Virginia State Corporation Commission
- Virginia Department for Aging and Rehabilitative Services
- National Association of State Retirement Administrators
- AARP
- Groom Law Group
- Center for Retirement Research at Boston College
- Georgetown Center for Retirement Initiatives
- The Pew Charitable Trusts
- American Council of Life Insurers
- Virginia Bankers Association
- Virginia Credit Union League
- Virginia Retail Merchants Association
- Virginia Chamber of Commerce
- United States Small Business Administration
- Financial Services Institute, Inc.

- Securities Industry and Financial Markets Association
- ACG Worldwide
- Small Business Majority
- The Investment Company Institute
- Segal Consulting

The work group convened on the following dates:

- June 29, 2015
- March 29, 2016
- June 20, 2016

Before the June 20, 2016 meeting, VRS circulated a draft report to members of the work group and offered members the opportunity to provide feedback. Although all working group participants had the opportunity to contribute to this report, its contents are not necessarily a reflection of any individual participant's specific views, but rather an effort to reflect the collective input of the group.

Background

Americans Rely on a Variety of Resources in Retirement

Historically, American workers have depended on a multi-prong or pyramid approach to retirement income: 1) Social Security, 2) employer-provided retirement plans, and 3) personal savings or earnings, which can include a home.[1] Each U.S. household relies on these sources, to varying degrees. These sources have each undergone numerous changes over the years. For example, Social Security has evolved to function similar to a pension for lower-income workers as the payroll tax has increased[2] and replacement rates have risen.[3] The composition of private-sector retirement plans has also changed, where 401(k)-style defined contribution (DC) plans, versus traditional defined benefit (DB) pension plans, now tend to dominate private industry.

In 1980, 148,096 DB plans covered 30 million active workers (30 percent of the workforce). By 2012, those numbers decreased to 43,601 defined benefit plans covering 16 million active U.S. workers (11 percent of the workforce). Over the same period, the number of DC plans increased from about 340,805 to a peak of 686,878 plans in 2000 before decreasing slightly to 633,021 in 2012. DC plans covered 19 million workers (19 percent of the workforce) in 1980, and increased to 75.4 million active participants (53 percent of the workforce) by 2012. Although the number of DC plans decreased after 2000, the number of active participants in such plans continued to rise, from 51 million to 75 million in 2012.[4]

Workers also have access to individual retirement accounts (IRAs), whether to contribute individually or roll over accumulations from employer-sponsored retirement plans.[5] As noted above, a key resource for a majority of U.S. households is personal savings, including their home, which not only provides shelter but can also potentially serve as an asset.

Retirement policy often focuses on three major issues regarding workplace retirement plans: access, participation, and coverage. To provide access, an employer must offer a plan to workers, and workers must be eligible to participate under the terms of the plan. Participation refers to employees actually taking part in the plan, which typically requires making contributions. Depending on the program structure used by the employer, workers could need to make an active choice to sign up for a plan, or they could be enrolled automatically when they are hired, with the choice to opt out. Coverage, sometimes referred to as the "take up rate," refers to the number or proportion of workers covered by retirement plans and is a function of access and participation.

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[1] *The Success of the U.S. Retirement System*, Peter Brady, Kimberly Burham, and Sarah Holden, December 2012, Washington, DC: Investment Company Institute, https://www.ici.org/pubs/white_papers.

[2] Social Security & Medicare Tax Rates, Social Security Administration, accessed August 31, 2016, https://www.ssa.gov/OACT/ProgData/taxRates.html.

[3] *See* Figure 8, based on *The Success of the U.S. Retirement System*, Peter Brady, Kimberly Burham, and Sarah Holden, Social Security Administration, Office of the Chief Actuary, December 2012, Washington, DC: Investment Company Institute, https://www.ici.org/pubs/white_papers.

[4] Data in paragraph derived from *Private Pension Plan Bulletin Historical Tables and Graphs* (Version 1.0, Tables E1 and E7), U.S. Department of Labor, September 2016, Washington: Government Printing Office, http://www.dol.gov/ebsa/pdf/historicaltables.pdf.

[5] "The Role of IRAs in U.S. Households' Saving for Retirement, 2015," Sarah Holden and Daniel Schrass, February 2016, *ICI Research Perspective* 22, no. 1, https://www.ici.org/research/perspective.

Retirement Savings: Accumulation, Adequacy, and Access

Regardless of the type of retirement vehicle employed, the second prong or layer of the pyramid presumes that a worker has access to a retirement plan through his or her employer. This report focuses, in part, on those who do not have access to an employer-sponsored retirement plan and ways that the Commonwealth may be able to increase retirement security for citizens who fall in this so-called "coverage gap." By recognizing that a coverage gap exists and that some citizens do not have access to a retirement plan at work, the Commonwealth has begun to review methods to help ensure that its citizens are financially prepared for retirement. One approach to this gap is to expand coverage by employer-sponsored retirement plans. Another approach could be to elevate awareness of traditional or Roth IRAs, which any worker can establish for themselves or their non-working spouses. Further, the work group's efforts, in line with the requirements of HB 1998, also focused on exploring mechanisms for improving the retirement savings situation for all Virginia citizens, regardless of whether they fall into the coverage gap.

Retirement Savings in America

As of June 30, 2016, U.S. households had $24.5 trillion, or just over one-third of their financial assets, earmarked for retirement.[6] IRAs were the largest single component of these retirement assets with $7.5 trillion, followed by DC plans (private- and public-employer plans) with $7 trillion. State and local government DB plans had $3.7 trillion in assets, while private-sector DB plans had $2.8 trillion and federal DB plans had $1.5 trillion.[7] Annuities outside of these plans were an additional $2 trillion.[8] These figures do not include unfunded DB plan liabilities or Social Security benefits. This nest egg represents the aggregation of access to employer-sponsored retirement plans, IRAs, and annuities for U.S. households, but there is a range of experience across U.S. households as they approach planning and saving for retirement.

In May 2016, the Federal Reserve Board released a report on the economic well-being of U.S. households, detailing that 31 percent of non-retired respondents reported having no retirement savings or pension, including 27 percent of those age 60 or older.[9] In March 2015, the National Institute on Retirement Security (NIRS) released two reports. Both highlighted issues contributing to the retirement savings shortfall, including that roughly 43 million American workers ages 25-64 do not have access to a retirement savings plan through their employer. NIRS suggested that this coverage gap plays a major role in Americans not having sufficient retirement savings or not participating in a retirement savings plan at all.[10]

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[6] "Report: U.S. Retirement Market, Second Quarter 2016," Investment Company Institute, September 2016, Table 1, https://www.ici.org/research/stats/retirement.

[7] "Report: U.S. Retirement Market, Second Quarter 2016," Investment Company Institute, September 2016, Table 1, https://www.ici.org/research/stats/retirement.

[8] "Report: U.S. Retirement Market, Second Quarter 2016," Investment Company Institute, September 2016, Table 1, https://www.ici.org/research/stats/retirement.

[9] *Report on the Economic Well-Being of U.S. Households in 2015* (p. 3), Board of Governors of the Federal Reserve System, May 2016, http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf.

[10] *The Continuing Retirement Savings Crisis*, Nari Rhee and Ilana Boivie, National Institute on Retirement Security, March 2015, http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.

When and How Do Americans Plan for Retirement?

Looking further into nationwide retirement savings behaviors, a 2014 Federal Reserve report provided details on the state of Americans' retirement savings habits. For example, not only did about 3 in 10 respondents report having no retirement savings or pension, almost half of the respondents reported having not planned financially for retirement.[11] More specifically, respondents included 24 percent who had given little thought to retirement planning and 25 percent who had not planned at all.[12] When asked about the type of retirement savings held by an individual or his or her spouse, the 2016 Federal Reserve report results varied based on age as shown in Figure 1.[13]

Figure 1 – Retirement Resources of Non-Retirees Vary by Age

Which of the following do you expect will be a source of funds for you in retirement? (by age)
Percent

Source of funds	18–29	30–44	45–59	60+	Overall
Social Security	42.3	58.9	80.9	90.7	65.3
I will continue working	40.3	41.1	34.2	37.6	38.3
Spouse/partner will continue working	22.2	24.4	19.5	18.9	21.6
Defined benefit pension from work	23.0	31.1	41.2	35.7	32.7
401(k), 403(b), thrift, or other defined contribution pension plan from work	44.7	57.0	60.3	41.1	52.8
Individual retirement account (IRA)	25.9	31.3	35.5	34.3	31.6
Savings outside a retirement account	44.7	44.1	44.8	42.9	44.3
Income from real estate or the sale of real estate	15.0	17.8	20.4	18.8	18.0
Income from a business or the sale of a business	7.1	6.2	4.8	7.1	6.1
Rely on children, grandchildren, or other family	4.8	4.4	3.3	4.1	4.1
Rely on inheritance	7.3	8.0	7.5	4.3	7.2
Other retirement savings	13.7	11.6	14.8	16.9	13.8

Note: Among respondents who are not currently retired.

Source: Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2015,* May 2016.

Although the survey report mentioned that respondents may have issues recalling all details of their household finances,[14] it is worth noting that only 36.3 percent of respondents overall, and 67.6 percent of respondents age 60 or older, indicate that they have Social Security Old-Age benefits, commonly called "Social Security." Data from the Social Security Administration (SSA) indicate that coverage by Social Security is nearly universal for American workers. The SSA's Office of the Chief Actuary estimates that about 94 percent of workers in paid

[11] *Report on the Economic Well-Being of U.S. Households in 2013* (p. 3), Board of Governors of the Federal Reserve System, July 2014, http://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf.
[12] *Report on the Economic Well-Being of U.S. Households in 2013* (Table 16, p. 25), Board of Governors of the Federal Reserve System, July 2014, http://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf.
[13] *Report on the Economic Well-Being of U.S. Households in 2015* (Table 34, p. 67), Board of Governors of the Federal Reserve System, May 2016, http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf.
[14] *Report on the Economic Well-Being of U.S. Households in 2015* (p. 6), Board of Governors of the Federal Reserve System, May 2016, http://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf.

employment and self-employment are covered under the Old-Age, Survivors, and Disability Insurance (OASDI) program.[15] In addition, as of December 31, 2015, the SSA's Office of the Chief Actuary estimates that about 88 percent of individuals age 65 or older were receiving benefits.[16] Furthermore, current population survey data indicate that Social Security is the main component of retiree income for a majority of retirees.[17] This reflects a lack of understanding of OASDI benefits by a majority of survey respondents.

Additionally, retirement patterns revealed in the 2014 Federal Reserve Report were linked to the impact of the Great Recession. For those ages 45 and over, roughly 40 percent of non-retired respondents said that the Great Recession had delayed their planned retirement date.[18] On the other hand, 15 percent of those who retired since 2008 reported retiring earlier than anticipated due to the Great Recession.[19] Among those non-retired respondents who had given at least some thought to retirement, responses varied when asked about a specific approach for entering retirement, as shown in Figure 2.[20]

Figure 2 – U.S. Workers Have a Variety of Approaches to Stopping Work and Entering Retirement

Which one of the following best describes your plan for retirement? (by age)
Percent, except as noted

	18–29	30–44	45–59	60+	Overall
I do not plan to retire	4.8	6.0	8.0	3.1	6.2
Work fewer hours as I get close to retirement	13.8	9.9	6.1	14.2	9.6
Retire from my current career, but then find a different full-time job	4.5	4.4	4.2	0.2	3.8
Retire from my current career, but then find a different part-time job	14.8	13.2	18.1	16.6	15.8
Retire from my current career, but then work for myself	10.0	10.6	10.4	6.1	9.9
Work full time until I retire, then stop working altogether	34.6	29.2	22.1	14.6	25.5
Keep working as long as possible	15.8	21.6	21.2	28.1	21.3
Other	0.9	3.7	9.8	16.4	7.2
Total number of respondents					1,766

Note: Among those who have given at least some thought to retirement.

Source: Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2013,* July 2014.

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[15] "Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program," Social Security Administration, Office of the Chief Actuary, March 15, 2016, *Social Security Program Fact Sheet,* https://www.ssa.gov/oact/FACTS/fs2015_12.pdf.

[16] "Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program," Social Security Administration, Office of the Chief Actuary, March 15, 2016, *Social Security Program Fact Sheet,* https://www.ssa.gov/oact/FACTS/fs2015_12.pdf.

[17] "A Look at Private-Sector Retirement Plan Income After ERISA, 2013," Peter Brady and Michael Bogdan, October 2014, *ICI Research Perspective* 20, no. 7, https://www.ici.org/research/perspective.

[18] *Report on the Economic Well-Being of U.S. Households in 2013 (*p. 3), Board of Governors of the Federal Reserve System, July 2014, http://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf.

[19] *Report on the Economic Well-Being of U.S. Households in 2013* (p. 3), Board of Governors of the Federal Reserve System, July 2014, http://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf.

[20] *Report on the Economic Well-Being of U.S. Households in 2013* (Table 17, p. 26), Board of Governors of the Federal Reserve System, July 2014, http://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf.

Retirement Accumulations Vary with Age and Income

As noted in various research and reports on the topic, Americans' lack of planning is only a portion of the nationwide retirement savings shortfall. The dollar figures demonstrate another critical element of the issue. A report by NIRS in 2013 suggested that America's collective retirement savings shortfall ranged from $6.8 to $14 trillion depending on the financial measure.[21] In addition, a 2015 NIRS report indicated that, when accounting for all U.S. households (not just those with retirement accounts), the median retirement account balance was $2,500 for working-age households and $14,500 for near-retirement households.[22]

While this data is informative, it may understate the actual resources available at retirement since it does not reflect benefits available under DB retirement plans or Social Security. The number could also be skewed lower since it includes younger workers who have not had an entire career to accumulate retirement savings. Because households of different income levels were combined, it is difficult to account for varying replacement incomes that would be reflective of income during working years.

The Federal Reserve's 2013 Survey of Consumer Finances (SCF) data provide insight into the variation in retirement accumulations by U.S. households. The Economic Policy Institute (EPI) analyzed SCF data and concluded that, when accounting for all U.S. working-age households, the median balance in a retirement account was $5,000 in 2013 (Figure 3).[23] Even when excluding households without a retirement account, the median balance was still only $60,000 in 2013.[24]

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[21] *The Retirement Savings Crisis: Is It Worse Than We Think?*, Nari Rhee, National Institute on Retirement Security, June 2013, http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf.

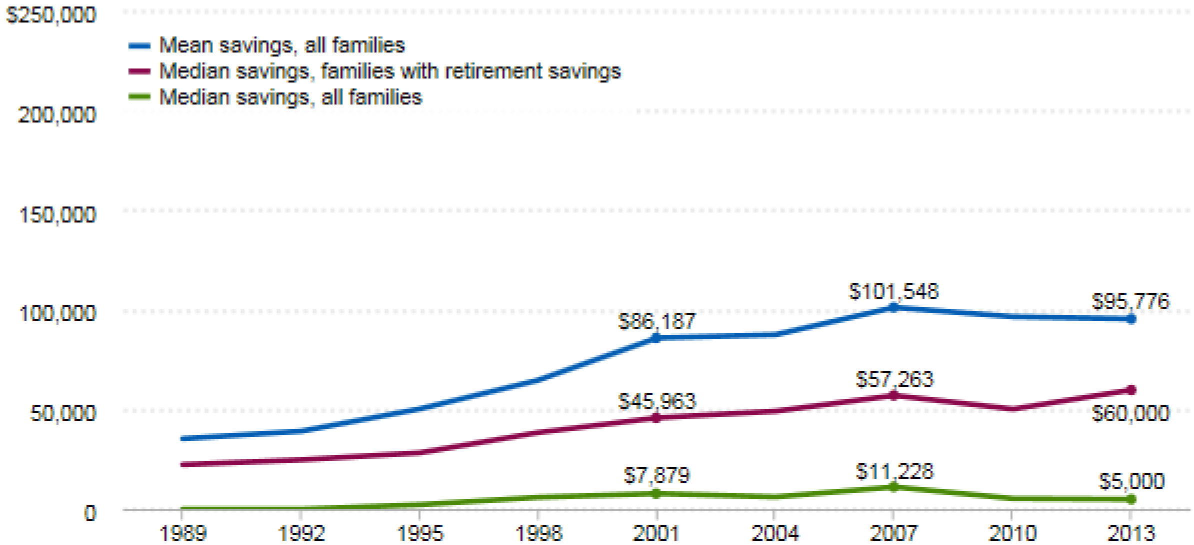
[22] *The Continuing Retirement Savings Crisis*, Nari Rhee and Ilana Boivie, National Institute on Retirement Security, March 2015, http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.

[23] *The State of American Retirement: How 401(k)s have failed most American workers*, Monique Morrissey, Economic Policy Institute, March 3, 2016, http://www.epi.org/publication/retirement-in-america/.

[23] *The State of American Retirement: How 401(k)s have failed most American workers*, Monique Morrissey, Economic Policy Institute, March 3, 2016, http://www.epi.org/publication/retirement-in-america/.

[24] *The State of American Retirement: How 401(k)s have failed most American workers*, Monique Morrissey, Economic Policy Institute, March 3, 2016, http://www.epi.org/publication/retirement-in-america/.

Figure 3 – Retirement Account Savings
Families age 32-61, 1989-2013 (2013 dollars)

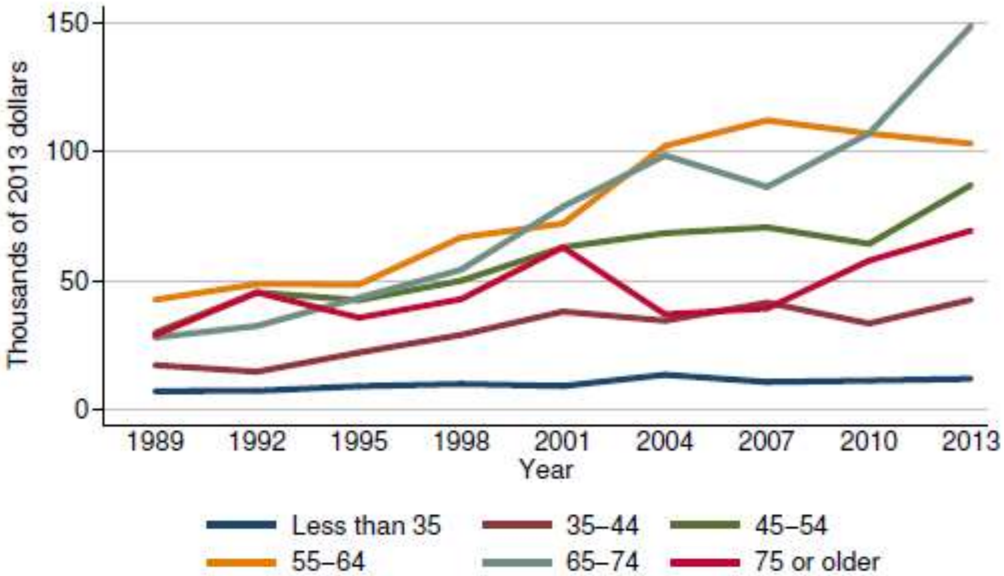


Note: Retirement account savings include 401(k)s, IRAs, and Keogh plans.
Source: Economic Policy Institute, *The State of American Retirement: How 401(k)s have failed most American workers*, March 2016.

This analysis includes households that are young and only just starting out in their careers and does not include households age 62 or older who tend to have larger retirement account savings. The Federal Reserve Board publishes retirement account assets by household age and the data indicate that the median for households younger than 35 (with retirement account assets) was $12,000 in 2013, while the median retirement account holdings for households age 55 to 64 (with retirement account assets) was $103,200. For households age 65 to 74 (with retirement account assets), the median was $148,900 (Figure 4).[25]

[25] The Federal Reserve Board publishes incidence and number of retirement accounts in "2013 SCF Chartbook," http://www.federalreserve.gov/econresdata/scf/files/BulletinCharts.pdf.

Level, thousands of 2013 dollars, by age of head of household, 1989–2013



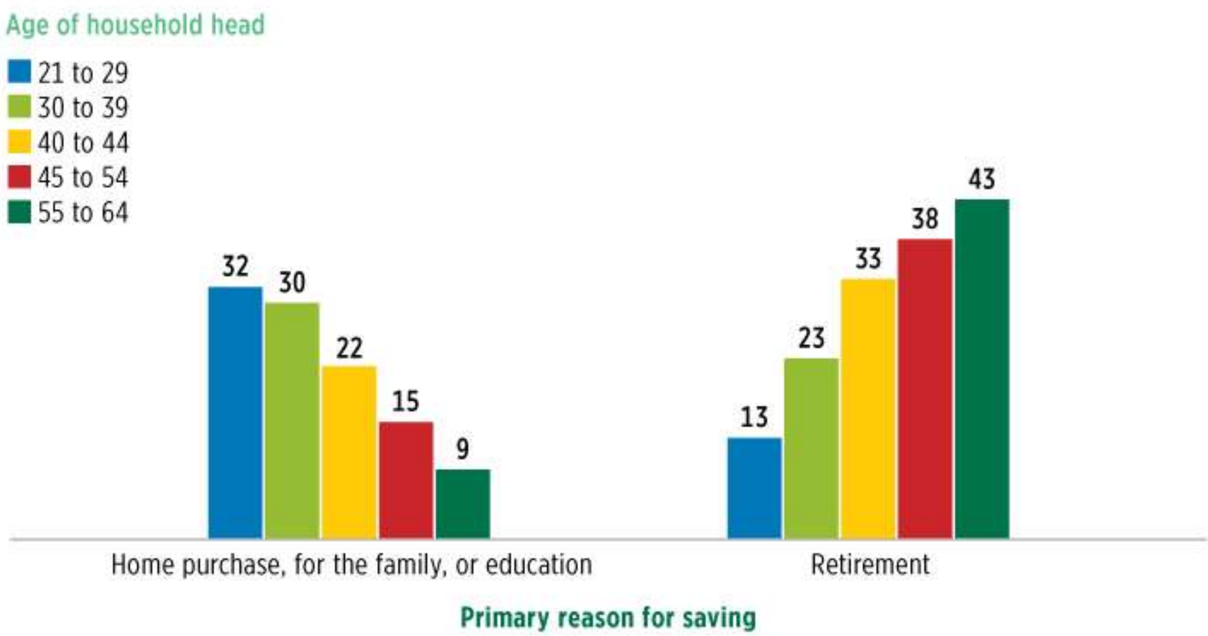
Median value of retirement accounts for families with holdings

Year	Age of head					
	Less than 35	35-44	45-54	55-64	65-74	75 or older
Level (thousands of 2013 dollars)						
1989	7.2	17.3	29.8	42.7	28.0	28.9
1992	7.3	14.7	45.5	48.7	32.5	45.5
1995	9.1	22.2	42.5	48.6	43.4	35.7
1998	10.0	29.0	50.0	66.8	54.3	42.9
2001	9.2	38.1	63.0	72.2	78.8	63.0
2004	13.6	34.5	68.5	102.4	98.7	37.0
2007	10.7	41.5	70.7	112.3	86.5	39.3
2010	11.3	33.4	64.3	107.2	107.2	57.9
2013	12.0	42.7	87.2	103.2	148.9	69.5

Source: Federal Reserve Board, "2013 SCF Chartbook."

The data reflects the life cycle of savings. For younger households, in particular, lower earnings and competing financial obligations can often use up an individual's income that would otherwise be placed into a retirement savings vehicle. These other financial obligations come in many forms. For many people, monthly expenses such as a mortgage or rent, car payments, medical bills, or childcare quickly reduce any income that could be saved for retirement. When looking specifically at younger workers, student loan debt is another common obligation that can easily consume one's income. In addition, workers may have competing financial goals such as saving for a down payment on a house. The SCF provides insight into the changing savings goals of households over the life cycle (Figure 5).[26]

Figure 5 – Primary Reason for Household Saving Changes with Age
Percentage of households by age of household head, 2013



Source: Investment Company Institute tabulations of the 2013 Federal Reserve Board Survey of Consumer Finances; *2016 Investment Company Fact Book: A Review of Trends and Activities in the U.S. Investment Company Industry, 56th Edition*, 2016.

While Figure 5 addresses the impact of the savings life cycle on retirement assets, it does not address the variation in retirement assets by household income. Workplace retirement plans and IRAs complement Social Security, and Social Security benefits, by design, provide higher replacement of earnings for individuals with low lifetime household earnings.[27]

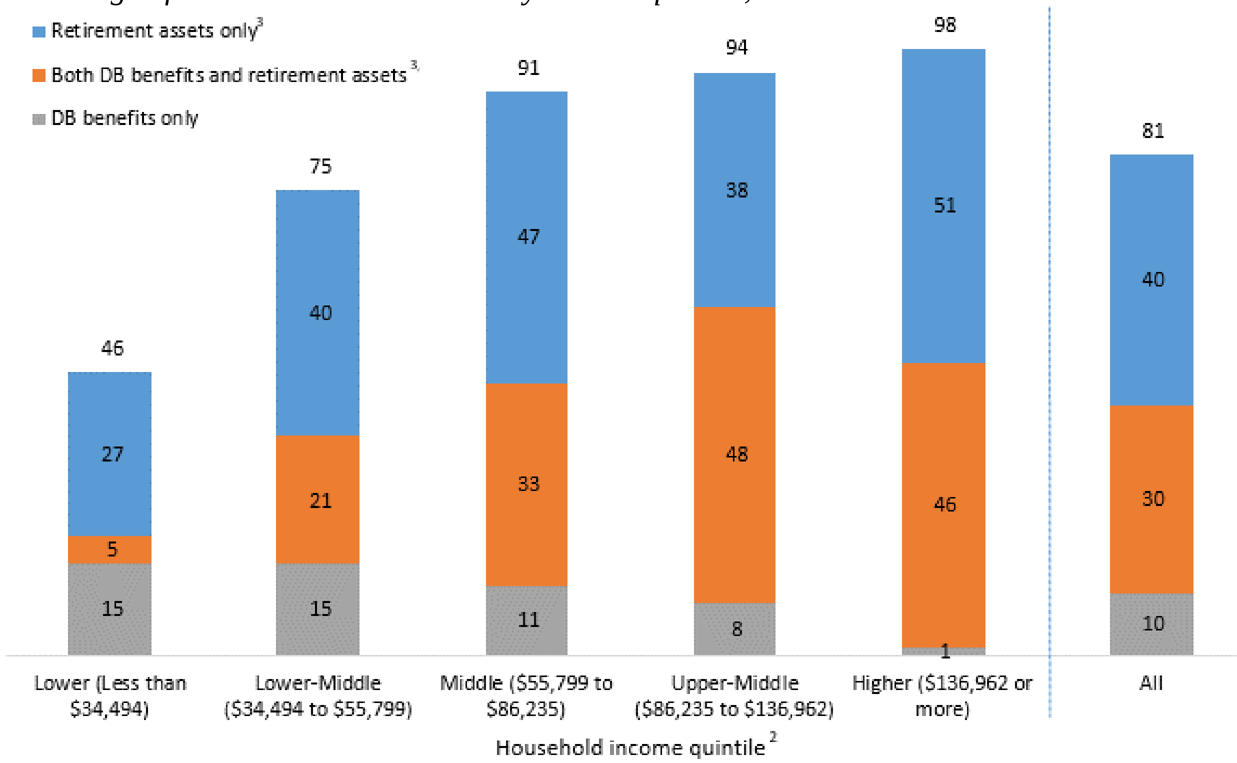
In addition to ignoring the role of Social Security, focusing only on retirement assets does not take into account the role that DB plans play or the role of homeownership. It is helpful to analyze the savings of near-retiree households, which are more reflective of actual assets available at retirement. SCF data show that 81 percent of near-retiree households (head of household age 55 to 64 and either head or spouse is working) had retirement accumulations in 2013, with 40 percent reporting DB plan benefits, 70 percent reporting retirement assets (DC plan assets or IRAs), and 30 percent reporting both DB plan benefits and retirement assets

[26] See *2016 Investment Company Fact Book: A Review of Trends and Activities in the U.S. Investment Company Industry, 56th Edition* (Figure 7.2), Investment Company Institute, 2016, www.icifactbook.org.
[27] Social Security replaces a much higher fraction of pre-retirement earnings for lower-income workers. For example, the projected first-year replacement rate (mean scheduled Social Security first-year benefits as a percentage of average inflation-indexed career earnings for retired workers in the 1960–1969 birth cohort) was 86 percent for the lowest lifetime household earnings quintile, 65 percent for the second-lowest quintile, and 55 percent for the middle quintile. "Alt. Replacement Rate B," Congressional Budget Office, December 2015, *CBO's 2015 Long-Term Projections for Social Security: Supplemental Data*, https://www.cbo.gov/publication/51047.

(Figure 6). Retirement accumulations complement Social Security, and therefore play a more important role for higher-income households, which tend to get a lower replacement rate from Social Security. Indeed, nearly all of the top three-fifths of near-retiree households ranked by household income have retirement accumulations to complement the lower replacement rate that they get from Social Security. Nevertheless, nearly half of the lowest income quintile of near-retiree households had retirement accumulations.

Figure 6 – Near-Retiree Households Across All Income Groups Have Retirement Assets or DB Benefits or Both

Percentage of near-retiree households[1] by income quintile,[2] 2013



[1] Near-retiree households are households with a head of household age 55 to 64 and either head or spouse is working.
[2] Total is household income before taxes in 2012.
[3] Retirement assets include DC plan assets (401(k), 403(b), 457, thrift, and other DC plans) and IRAs (traditional, Roth, SEP, SAR-SEP, and SIMPLE), whether from private-sector or government employers.
Source: Investment Company Institute tabulations of the 2013 Survey of Consumer Finances.

Older Individuals' Households Without Retirement Accumulations Tend to Be Financially Stressed

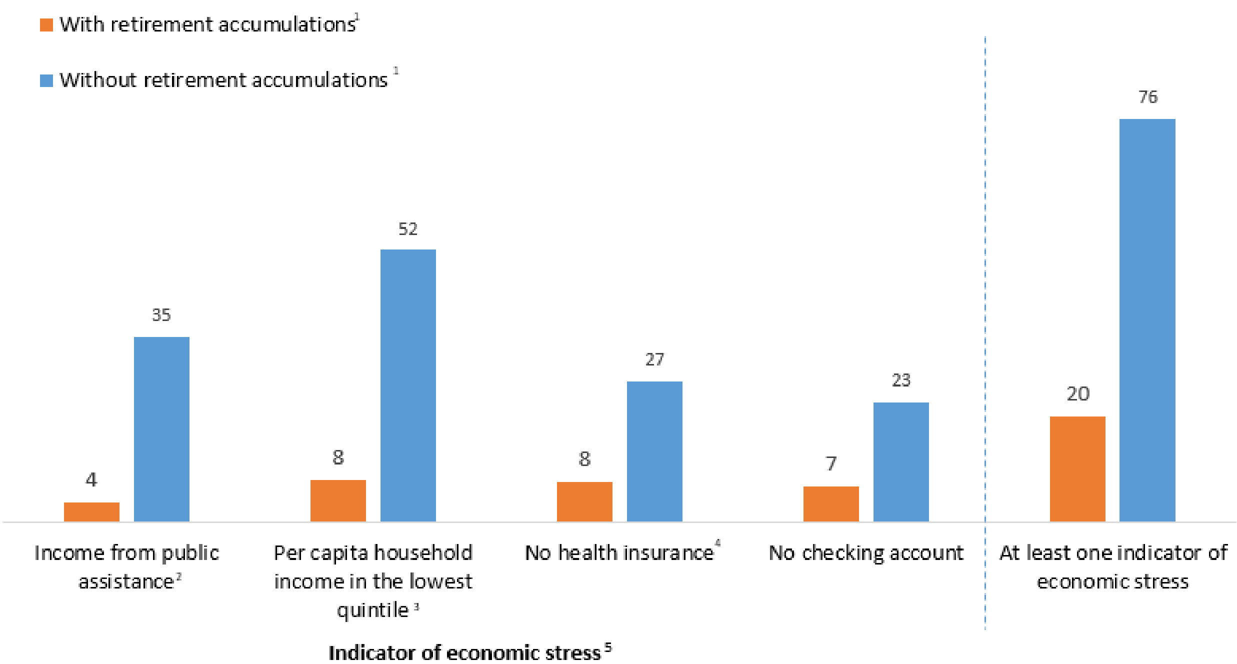
If one broadens the analysis to households age 55 to 64, whether currently working or not, it is possible to get insight into those older households that do not have any retirement accumulations. SCF data for 2013 indicate that 73 percent of these older households had retirement accumulations and 27 percent did not. Analysis of household balance sheet data indicates that households without retirement accumulations are more likely to have financial stresses compared to households with retirement accumulations. Given the life cycle of saving, however, it may be relevant to focus on older households that have had an entire career to address retirement savings needs.

Exploring households with a head of household age 55 to 64, whether working or not, by their retirement accumulation status reveals significant differences (Figure 7). Retirement accumulations can be in the form of DC plans, IRAs, or DB plan benefits. Among older households without retirement accumulations, 35 percent reported that they received income from public assistance, compared to only 4 percent of older households with retirement accumulations. More than half (52 percent) of older households without retirement accumulations were in the lowest per capita household income quintile, compared to 8 percent of older households with retirement accumulations. More than one-quarter (27 percent) of older households without retirement accumulations had no health insurance and almost one-quarter (23 percent) had no checking accounts. Households may fall into more than one category of financial stress, and, overall, 76 percent of older households without retirement accumulations faced at least one of these financial stresses, compared to only 20 percent of households with retirement accumulations.

These data suggest that the majority of U.S. households approaching retirement age have retirement accumulations to supplement their Social Security benefits. Older households without retirement accumulations often face other financial stresses, which prevent them from saving for retirement to supplement Social Security.

Figure 7 – Older Households Without Retirement Accumulations Tend to Have Financial Stresses

Percentage of U.S. households age 55 to 64 by retirement accumulation status, 2013

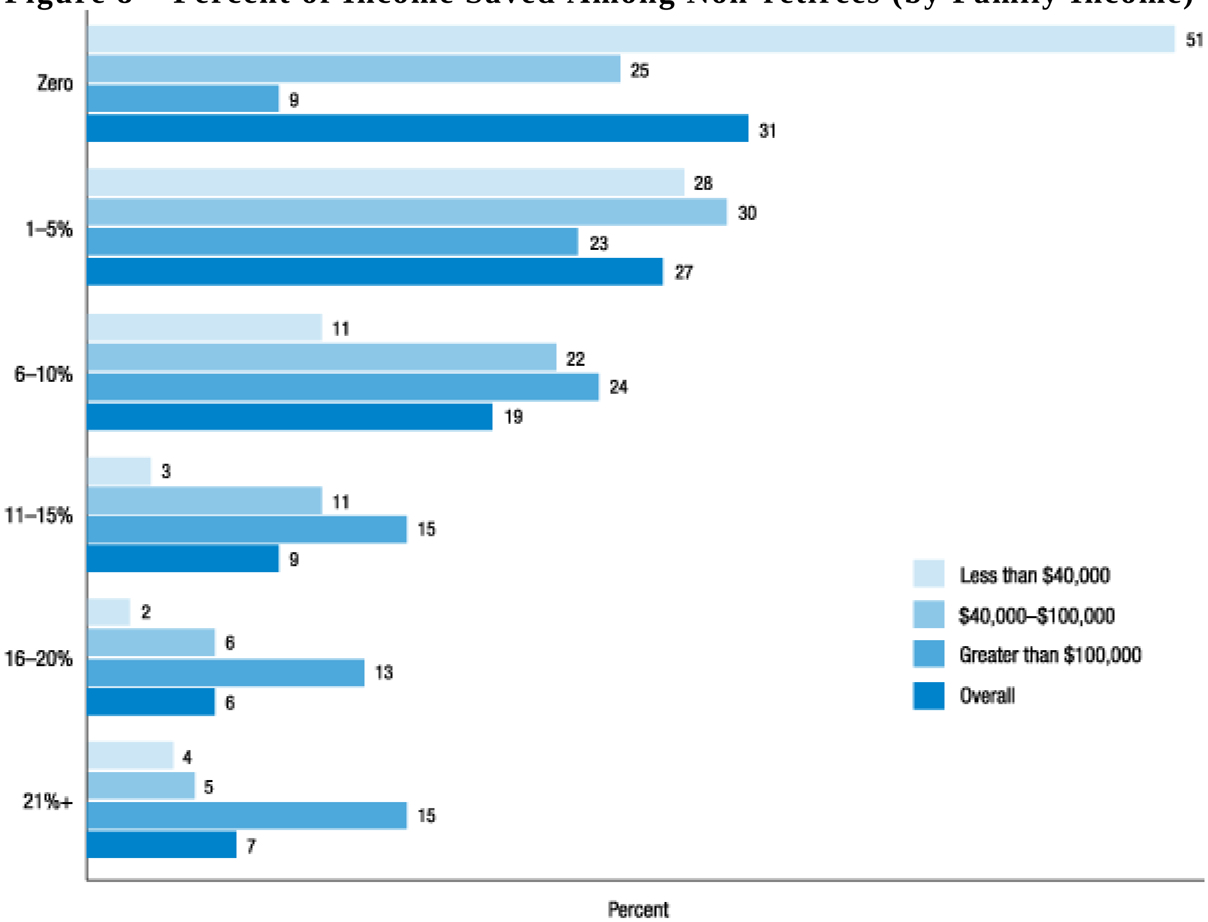


[1] Retirement accumulations include retirement assets and DB benefits. Retirement assets include DC plan assets (401(k), 403(b), 457, thrift, and other DC plans) and IRAs (traditional, Roth, SEP, SAR-SEP, and SIMPLE), whether from private-sector or government employers. DB benefits include households currently receiving DB

benefits and households with the promise of future DB benefits, whether from private-sector or government employers.
[2] Income from public assistance includes TANF, SNAP, and other forms of welfare or assistance, such as SSI.
[3] Households with a head age 55 to 64 at the time of the survey were ranked by per capita household income before taxes in 2012.
[4] No health insurance indicates that no individual in the household had public or private health insurance.
[5] Households may fall into multiple categories.
Note: The sample represents 23.0 million households with head of household age 55 to 64; 73 percent had retirement accumulations and 27 percent did not.
Source: Investment Company Institute tabulations of 2013 Survey of Consumer Finances.

Conversely, non-retirees with higher levels of income are more likely to report that they are saving money than those with lower income levels. Three-quarters of those in the middle-income group ($40,000 to $100,000) and 90 percent of those in the highest income group (over $100,000) indicate that they saved some portion of their income. Also, the proportion of higher-income respondents who are saving at least 10 or 20 percent of their income is significantly larger than for lower- or middle-income households, as shown in Figure 8.[28]

Figure 8 – Percent of Income Saved Among Non-retirees (by Family Income)



[28] *Report on the Economic Well-Being of U.S. Households in 2015* (website), Board of Governors of the Federal Reserve System, May 2016, https://www.federalreserve.gov/econresdata/2016-economic-well-being-of-us-households-in-2015-Income-and-Savings.htm

Evaluating Adequacy: How Well Are Americans Preparing for Retirement?

The available data discussed above shed light on how many people have earnings, retirement accumulations, Social Security benefits, or own their home. The data also provide insights into how retirement resources vary over the savings life cycle and by income level. But, it is another exercise altogether to determine whether individuals are adequately prepared for retirement, for which researchers have come to different conclusions.

There are a variety of ways to approach assessing retirement preparedness, including projecting income replacement rates, assessing the ability of retirees to maintain consumption levels, or determining whether households have saved the amount expected by economic models of lifetime savings.[29] ICI reviewed several different retirement savings models, including the National Retirement Risk Index, measuring working-age household data using the Federal Reserve's Survey of Consumer Finances; the Employee Benefit Research Institute (EBRI) Retirement Readiness Ratings, using data from millions of employees in thousands of pension plans; a July 2011 paper by Michael D. Hurd and Susann Rohwedder on Economic Preparation for Retirement focusing on households just past normal retirement age (ages 66 to 69); and a September 2008 paper by John Karl Hurd and Ananth Seshadri, using data from a sample of households in or approaching retirement (varying ages, but all 51 or older). These modeling exercises produce results ranging from 48 percent prepared to 84 percent prepared.

The impact of inadequate retirement preparation can have a significant impact on social assistance programs. As workers who do not have adequate retirement savings begin to exit the workforce, there could be increased reliance on social assistance. In 2015, the U.S. Census Bureau indicated a slight decrease in the elderly population poverty rate.[30] However, any increasing trend due to the current state of inadequate retirement savings could place a greater financial strain on social assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP).

Access: What Is the Coverage Gap?

The coverage gap is a measure of the percentage of private-sector workers whose current employers do not offer a retirement plan (DB or DC). The U.S. Bureau of Labor Statistics (BLS) and U.S. Census Bureau's Current Population Survey (CPS), which is a household survey, is most commonly used to determine employer-sponsored retirement plan coverage. The CPS typically reflects lower rates of retirement plan coverage than the National Compensation Survey (NCS) of business establishments, or results from analyzing tax return data.[31] Household

[29] For a summary of some of this research, see "Unconventional Wisdom on Retirement Preparedness," Peter Brady, August 4, 2014, *ICI Viewpoints*, https://www.ici.org/viewpoints/view_14_four_studies.

[30] *Income and Poverty in the United States: 2015*, Bernadette D. Proctor, Jessica L. Semega, Melissa A. Kollar, U.S. Census Bureau, September 2016, Report Number: P60-256, https://www.census.gov/library/publications/2016/demo/p60-256.html.

[31] Other research also suggests that survey respondents tend to underreport retirement plan access and participation. For example, see "Assessment of Retirement Plan Coverage by Firm Size, Using W-2 Tax Records," Irena Dushi, Howard M. Iams, and Jules Lichtenstein, 2011, *Social Security Bulletin* 71, No. 2, https://www.ssa.gov/policy/docs/ssb/v71n2/v71n2p53.pdf; and Figure 7 in "The Effect of the Current Population

respondents to the CPS may not recall or realize that their employers offer retirement plan coverage or may be confused by the wording of the questions. While the CPS data show that 59 percent of all full-time, full-year private-sector wage and salary workers report retirement plan coverage in 2013,[32] the March 2014 NCS found 74 percent of all full-time private-industry workers actually had access to a retirement plan at work.[33]

Determining the Extent of the Coverage Gap Nationwide

A possible hurdle to saving for retirement may be access to an employer-sponsored retirement plan (i.e., the coverage gap). Even among full-time workers ages 25 to 64 in 2013, a NIRS analysis of CPS data reported that 42 percent (approximately 34 million workers) did not have access to an employer-sponsored plan.[34] Among all workers, NIRS found that only about 55 percent had access to an employer-sponsored plan in 2013, as shown in Figure 9.[35] A press release from the BLS using March 2016 data shows overall civilian (private nonfarm economy and workers in the public sector, excluding federal government) access at 69 percent, and full-time private industry access at 77 percent.[36] Reports from the Federal Reserve on the Economic Well Being of Households, the U.S. Government Accountability Office (GAO), and the Financial Industry Regulatory Authority (FINRA) also point out noteworthy differences with respect to gender, race and income related to retirement savings access, participation and contributions. See Appendix A - Other Resources for reports.

Survey Redesign on Retirement-Plan Participation Estimates," Craig Copeland, Employee Benefit Research Institute, December 2015, *EBRI Notes* 36, no. 12, p. 1–11, Washington, DC, www.ebri.org/pdf/notespdf/EBRI_Notes_12_Dec15_CPS-WBS.pdf.

[32] Retirement plan coverage includes DB and/or DC plans. Figures are Investment Company Institute tabulations of 2014 CPS data; see *Letter to California State Treasurer Chiang, regarding Overture Financial Final Report to the California Secure Choice Retirement Savings Investment Board* (note 42, page 23), Investment Company Institute, March 24, 2016, https://www.ici.org/govaffairs/ret_sec/state/16_news_ca_state_retirement.

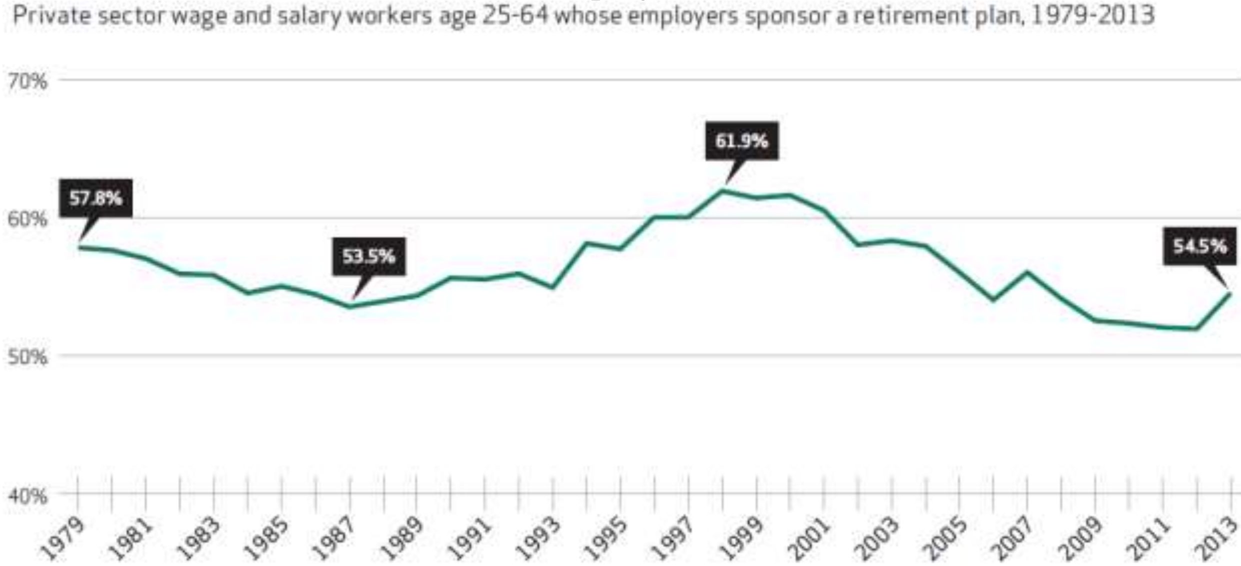
[33] See "Employee Benefits in the United States – March 2014," U.S. Department of Labor, Bureau of Labor Statistics, July 25, 2014, *News Release* USDL-14-1348, Table 1, www.bls.gov/ncs/ebs/sp/ebnr0020.pdf. The March 2015 NCS reports that 66 percent of all private-industry workers and 76 percent of all full-time private-industry workers had access to a pension. See "Employee Benefits in the United States—March 2015," U.S. Department of Labor, Bureau of Labor Statistics, July 24, 2015, *News Release* USDL-15-1432, www.bls.gov/news.release/pdf/ebs2.pdf.

[34] See *The Continuing Retirement Savings Crisis* (p. 4), Nari Rhee and Ilana Boivie, National Institute on Retirement Security, March 2015, http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.

[35] See *The Continuing Retirement Savings Crisis* (Figure 1, p. 4), Nari Rhee and Ilana Boivie, National Institute on Retirement Security, March 2015, http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.

[36] See *Employee Benefits in the United States – March 2016* (p. 5), Bureau of Labor Statistics, released July 22, 2016, http://www.bls.gov/news.release/pdf/ebs2.pdf.

Figure 9 – 55 Percent of Private-Sector Workers Have Access to a Workplace Retirement Plan at Their Current Employer



Source: NIRS tabulation of Current Population Survey; National Institute on Retirement Security, *The Continuing Retirement Savings Crisis*, March 2015.

As discussed above, the CPS data may understate retirement plan coverage at work. While the quantitative measure varies by data source and population considered (age composition, income composition, share who are part-time or part-year), it is nevertheless possible to gain qualitative insight into which workers are likely to work for employers with retirement plans and which are likely not to have such coverage.

Women particularly tend to have inadequate retirement coverage, from lower Social Security benefits, insufficient personal savings, and a decreased likelihood of having an employer-sponsored DB pension.[37] They are working longer past retirement age, and, due to factors such as longer life expectancies, lower Social Security benefits, less income from retirement accounts, higher medical expenses, and an increased need for long-term care, women face poverty rates of approximately 10-12 percent when they do retire.[38] The BLS expects that the number of baby boomers, especially women, working past retirement age will continue to increase through 2024.[39] Census data shows that in 2011, at approximately 18.9 percent, the labor force participation rate of people age 65 and older in Virginia was higher than the national rate of 16.2

[37] *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, University of California- Berkeley, March 2016, http://laborcenter.berkeley.edu/pdf/2016/NIRS-Women-In-Retirement.pdf.
[38] *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, University of California- Berkeley, March 2016, http://laborcenter.berkeley.edu/pdf/2016/NIRS-Women-In-Retirement.pdf.
[39] "Labor force projections to 2024: the labor force is growing, but slowly," Bureau of Labor Statistics, December 2015, *Monthly Labor Review*, http://www.bls.gov/opub/mlr/2015/article/labor-force-projections-to-2024-1.htm.

percent.[40] In 2010, men received $17,856 in median income from DB pensions and women received 33 percent less, at $12,000 in median income from DB pensions. Median balances in DC accounts showed similar differences of 34 percent, with men accumulating $36,875 in 2014, compared to $24,446 accumulated by women.[41] Using the Elder Economic Security Standard Index (Elder Index) developed by Wider Opportunities for Women and the Gerontology Institute at the University of Massachusetts Boston, in 2014, elder individuals were expected to need from $20,076 to $30,348 per year, and an elder couple was expected to need $30,972 to $41,224 in retirement, depending on their housing needs.[42] Using the Census Bureau's Survey of Income and Program Participation (SIPP) data from 2012, the composition of household income in relation to the Elder Index for men and women age 65 and older is shown in Figure 10.

Figure 10 – The composition of household income for women and men, age 65 and over, by total household income

[40] "Labor Force Participation and Work Status of People 65 Years and Older," Braedyn Kronmer and David Howard, United States Census Bureau, January 2013, *American Community Survey Briefs*, https://www.census.gov/prod/2013pubs/acsbr11-09.pdf.

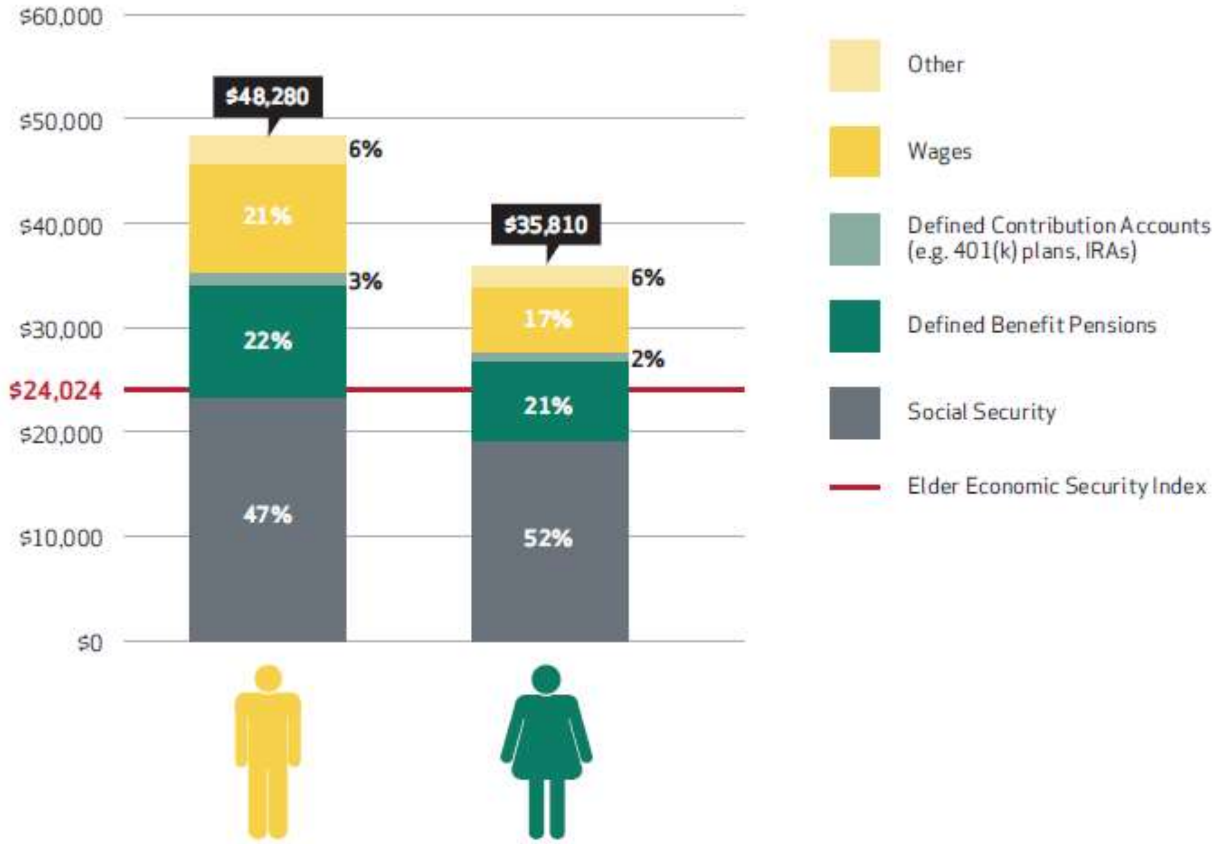
[41] *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, University of California- Berkeley, March 2016, http://laborcenter.berkeley.edu/pdf/2016/NIRS-Women-In-Retirement.pdf

[42] *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, University of California- Berkeley, March 2016, http://laborcenter.berkeley.edu/pdf/2016/NIRS-Women-In-Retirement.pdf.

Source: Author's calculations using SIPP data; Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, University of California- Berkeley, March 2016, page 15.

SIPP data from 2012 breaks down the sources of retirement income for men and women, shown in Figure 11. "Other" income includes public assistance, personal savings, and other resources not already described.

Figure 11 – The composition of median household income in relation to the Elder Index, for men and women, age 65 and older



Source: Author's calculations using SIPP data; Jennifer Erin Brown, Nari Rhee, Joelle Saad-Lessler, and Diane Oakley, *Shortchanged in Retirement: Continuing Challenges to Women's Financial Future*, University of California-Berkeley, March 2016, page 12.

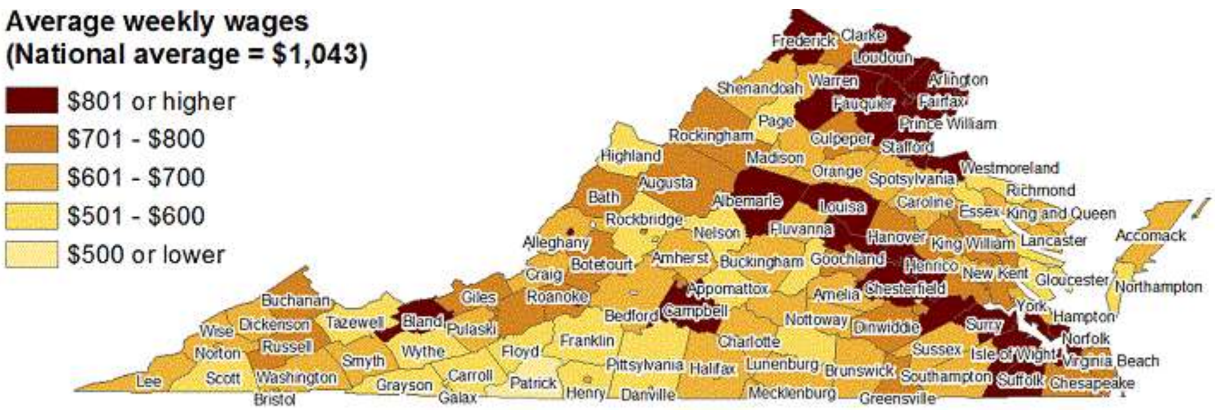
Reviewing Access to Workplace Retirement Savings in the Commonwealth

The issues discussed in the previous section related to nationwide concerns are also present in the Commonwealth of Virginia. In order to provide the General Assembly information tailored to the Commonwealth, this section focuses on the wage composition of Virginia workers, and retirement savings and the coverage gap in Virginia.

Average Wages by County in Virginia

Reviewing the wage landscape across the Commonwealth allows for additional context for retirement savings, since wages and savings rates are generally considered linked. In addition, some employees view retirement savings as a discretionary use of their income. The amount of discretionary income available to an employee is largely driven by the amount of his or her regular pay. Figure 12 demonstrates the spectrum of wage earnings in Virginia from the first quarter of calendar year 2016, as compiled by the BLS. In a majority of Virginia counties and cities (92.5 percent), the average weekly wage among workers was lower than that of the national weighted average of $1,043 per week, despite the statewide weighted average being $1,057 per week. [43]

Figure 12 – Virginia Average Weekly Wages



Source: Bureau of Labor Statistics, *County Employment and Wages in Virginia—First Quarter 2016,* September 29, 2016.

At the time of this data's collection, Virginia had 132 counties and cities that BLS measured independently. The City of Bedford is listed in the BLS charts, but reverted to town status in 2013 and, therefore, did not report data and is not included in the total. The vast majority of the individual county or city observations (122 of the 132 total) fall below the national weighted average. The few localities above average figure more heavily in the weighted average, pulling the Virginia weighted-average weekly wage up above the national weighted average. However, three localities reported weighted-average weekly wages at half the state average or lower.[44] Below is a further breakdown of the results from Virginia's counties and cities:

- 1 reported average weekly wages of $500 or less
- 69 reported average weekly wages from $501 to $700
- 39 reported average weekly wages from $701 to $900
- 13 reported average weekly wages from $901 to $1,100
- 10 reported average weekly wages of $1,101 or more[45]

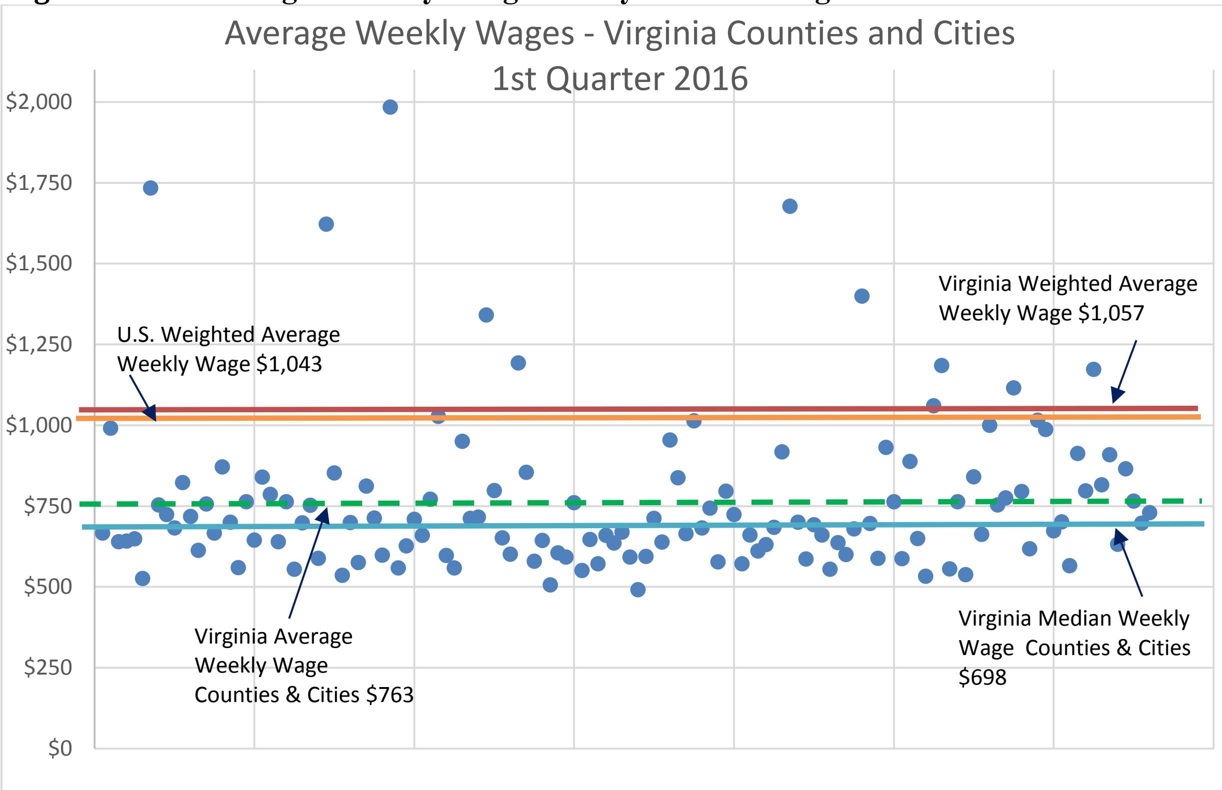
[43] *County Employment and Wages in Virginia – First Quarter 2016*, Bureau of Labor Statistics, United States Department of Labor, September 29, 2016, http://www.bls.gov/regions/mid-atlantic/news-release/2016/countyemploymentandwages_virginia_20160929.htm.

[44] *County Employment and Wages in Virginia – First Quarter 2016*, Bureau of Labor Statistics, United States Department of Labor, September 29, 2016, http://www.bls.gov/regions/mid-atlantic/news-release/2016/countyemploymentandwages_virginia_20160929.htm.

[45] *County Employment and Wages in Virginia – First Quarter 2016*, Bureau of Labor Statistics, United States Department of Labor, September 29, 2016, http://www.bls.gov/regions/mid-atlantic/news-release/2016/countyemploymentandwages_virginia_20160929.htm.

A complete breakdown of wages for each Virginia county and city can be found in Appendix B. Figure 13 is a snapshot of the weighted-average weekly wages in the 133 Virginia localities surveyed.

Figure 13 – Average Weekly Wages Vary Across Virginia's Counties and Cities



Source: Bureau of Labor Statistics, *County Employment and Wages in Virginia—First Quarter 2016*, September 2016.

In addition to wage earnings, another factor to note is the degree to which workers in Virginia have access to and participate in a workplace retirement plan. The Pew Charitable Trusts recently published a report specific to the Commonwealth of Virginia, titled, "Virginia Fact Sheet by The Pew Charitable Trusts on Virginians' Access to Employer-Sponsored Plans." In general, the Pew report found that 55 percent of working Virginians have access to an employer-sponsored plan, while only 44 percent of the same population participate in such a plan. More detailed information about Virginians' access to employer-sponsored plans can be found in Pew's report, which is available in its entirety in Appendix C.

Workers' access and participation also varies across Virginia's metropolitan statistical areas (MSAs).[46] Workers living in the Northern Virginia and Washington, D.C. suburbs tend to have higher rates of access and participation. Sixty percent of all workers living in the Washington

[46] MSAs contain a core urban area of at least 50,000 people and include the counties containing the core urban area and any adjacent counties with significant social and economic integration. For more information, see http://www.census.gov/population/metro/.

Metropolitan Area had access to a workplace retirement plan, while 50 percent participated.[47] Among all workers in the Richmond and Virginia Beach MSAs, 54 and 53 percent, respectively, had access while 43 and 41 percent participated.[48]

<u>Factors Associated with Workplace Retirement Plan Access and Participation</u>

Several factors are associated with access to and participation in retirement plans. In general, participation closely tracks access, which in turn is associated with labor force status (full time or part time), employer size, industry, income, education, race and ethnicity, age, and gender. The following summarizes these factors, but a more detailed discussion is provided in a comment letter from the Pew Charitable Trusts, attached as Appendix D.

<u>Labor force status:</u>

- Full-time workers tend to have more access to, and greater participation in, retirement plans.[49]
- The Pew Charitable Trusts analysis of the data shows that there are roughly 4 million workers in Virginia. Of these, approximately 300,000 are self-employed, over 2.8 million are employed in the private sector, and another 800,000 work in the public sector.
- According to data reviewed by The Pew Charitable Trusts, more than 700,000 full-time, full-year private sector workers in Virginia lack access to a workplace retirement plan. There are roughly another 500,000 part-time and part-year workers without access in Virginia.
- Many retirement plans require a certain number of hours worked or time period of employment before an employee is eligible to join the retirement plan, which may exclude part-time workers. In addition, part-time workers usually make less money and therefore may not feel that they can afford to contribute to a retirement plan.

<u>Employer size:</u>

- Larger firms tend to offer their employees retirement benefits at higher rates than smaller firms. Previous small business surveys have cited concerns about administrative costs, legal and regulatory requirements, lack of employee interest, and liability issues as factors that hinder smaller firms from offering retirement plans.[50]

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[47] For the Washington, D.C. MSA, estimates are restricted to only those workers who reside in Virginia.

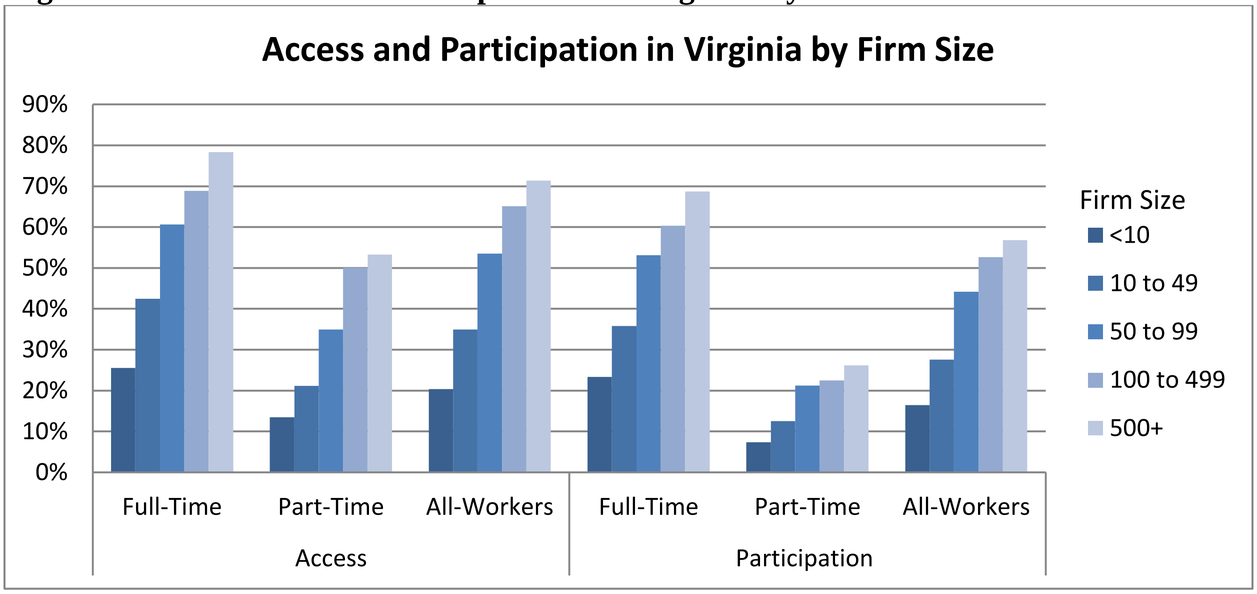
[48] Analysis of MSAs is limited to those with a population of at least 500,000. Only Richmond, Virginia Beach, and Washington, D.C. exceed this criterion.

[49] Workers are identified as full-time, full-year if they usually work at least 35 hours a week and they worked 50 or more weeks in the previous year. This group is referred to as simply full-time workers. Part-time workers are those who either work less than 35 hours a week or those who worked less than 50 weeks in the previous year. This group is referred to simply as part-time workers.

[50] *EBRI Notes, Vol. 24 Number 9* (p. 2), Employee Benefit Research Institute, Sept. 2003, http://www.ebri.org/pdf/notespdf/0903notes.pdf. This reasoning is consistent: more than half of small-business owners who did not offer a retirement plan listed cost as the largest obstacle in a 2013 Main Street Alliance-American Sustainable Business Council survey: *Poll Report: Small Business Owners' Views on Retirement Security* (p. 7), Main Street Alliance-American Sustainable Business Council, June 2013, http://asbcouncil.org/sites/default/files/library/docs/asbc_retirement_poll_report_june2013.pdf.

- Analysis by The Pew Charitable Trusts shows that employees see increased access and participation as the size of their employer increases.[51]
- While more than 53 percent of part time workers at firms with 500 employees or more had access to a retirement plan, only 26 percent of these workers participated in a workplace retirement plan.

Figure 14 – Access and Participation in Virginia by Firm Size



Source: The Pew Charitable Trusts.

<u>Industry:</u>

- The type of industry can also make a difference in whether employers offer retirement plans. Industries such as manufacturing, education and health services, financial activities and transportation tend to offer retirement benefits at a rate higher than the national average,[52] while industries such as leisure and hospitality, and construction tend to offer retirement benefits at rates below the average.[53]
- Twenty percent of part-time workers in Virginia work in the leisure and hospitality industry, and another 20 percent of Virginia's part-time workers are employed in the retail industry. See Appendix C.

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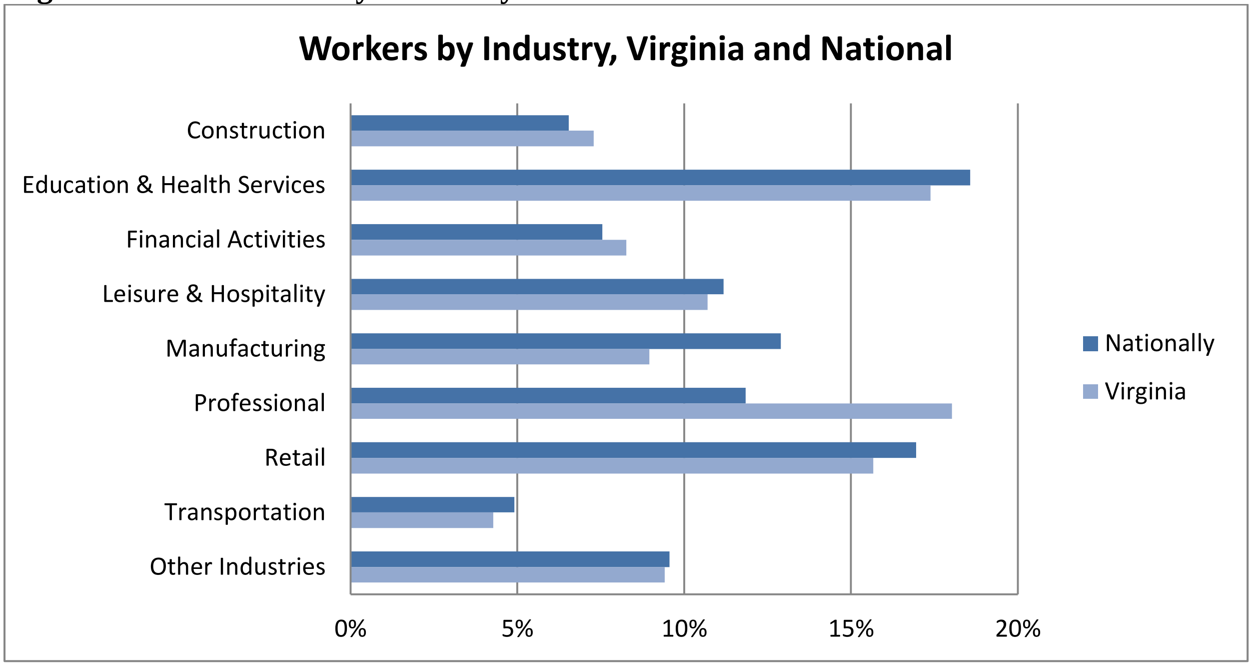
[51] *Who's In, Who's Out*, The Pew Charitable Trusts, January 2016, http://www.pewtrusts.org/~/media/assets/2016/01/retirement_savings_report_jan16.pdf. Other research using administrative data, rather than self-reported information, shows higher rates of access but similar patterns by firm size. "Retirement Plan Coverage by Firm Size: An Update," Irena Dushi, Howard M. Iams, and Jules Lichtenstein, 2015, *Social Security Bulletin* 75, no. 2, p. 45, http://www.ssa.gov/policy/docs/ssb/v75n2/v75n2p41.html. The authors looked at private-sector wage and salary workers ages 21-64 in the 2012 Survey of Income and Program Participation and found access rates of 28 percent for workers at firms with fewer than 10 employees and 73 percent for workers at firms with 50 to 99 employees. The authors also found that retirement plan access for workers at firms with fewer than 10 employees fell significantly from 2006, when it was 34 percent.

[52] "Survey of American Family Finances, Top-Lines Accompanying 'Americans' Financial Security: Perception and Reality,'" The Pew Charitable Trusts, 2015, p. 4, http://www.pewtrusts.org/~/media/assets/2015/03/fsm-poll-results-toplines_artfinal_v3.pdf.

[53] "The Precarious State of Family Balance Sheets," The Pew Charitable Trusts, p. 3.

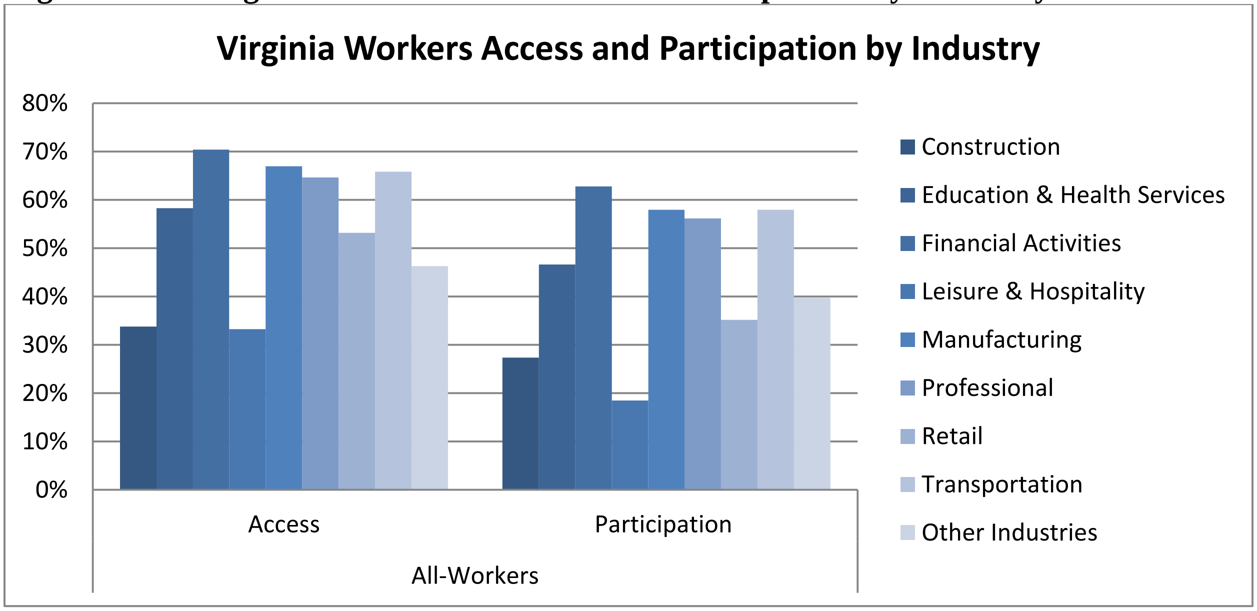
- According to the BLS, higher hour industries tend to provide access to employer-sponsored plans.[54]

Figure 15 – Workers by Industry



Source: The Pew Charitable Trusts.

Figure 16 – Virginia Workers Access and Participation by Industry



Source: The Pew Charitable Trusts.

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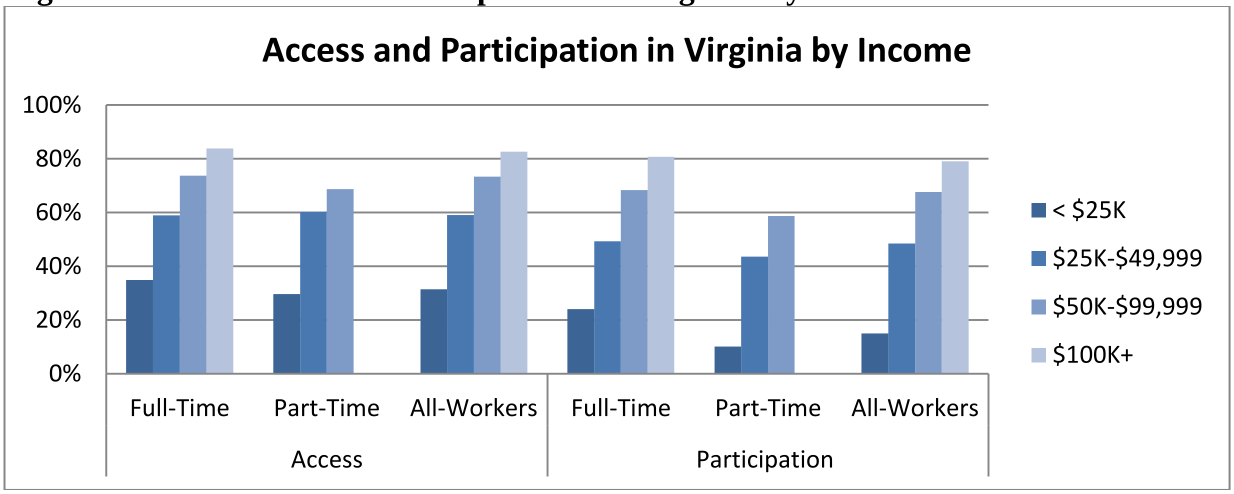
[54] *The Relationship Between Access to Benefits and Weekly Work Hours*, John L. Bishow, June 2015, U.S. Bureau of Labor Statistics Monthly Labor Review, http://www.bls.gov/opub/mlr/2015/article/pdf/the-relationship-between-access-to-benefits-and-weekly-work-hours.pdf.

Income:

- Jobs that offer lower wages or salary tend to offer fewer retirement benefits and employees with lower incomes tend to participate at lower levels.[55]
- Workers with less than $25,000 in personal income make up 18 percent of all workers in Virginia, while higher income workers (personal income of $100,000 or more) represent 15 percent of the workforce in Virginia.[56]
- Lower-wage jobs tend to be in sectors where employers are less likely to offer pensions or retirement savings plans.[57]
- In addition, those with low incomes may need their full pay—or more—to meet their regular expenditures. As reported by Pew, nearly half of American households have experienced an income drop or gain of more than 25 percent in any given two-year period, from 1968 to 1997.[58] Some of these workers may be unwilling or feel unable to commit to making contributions to a retirement savings plan when faced with such volatility.[59]

Figure 17 – Access and Participation in Virginia by Income



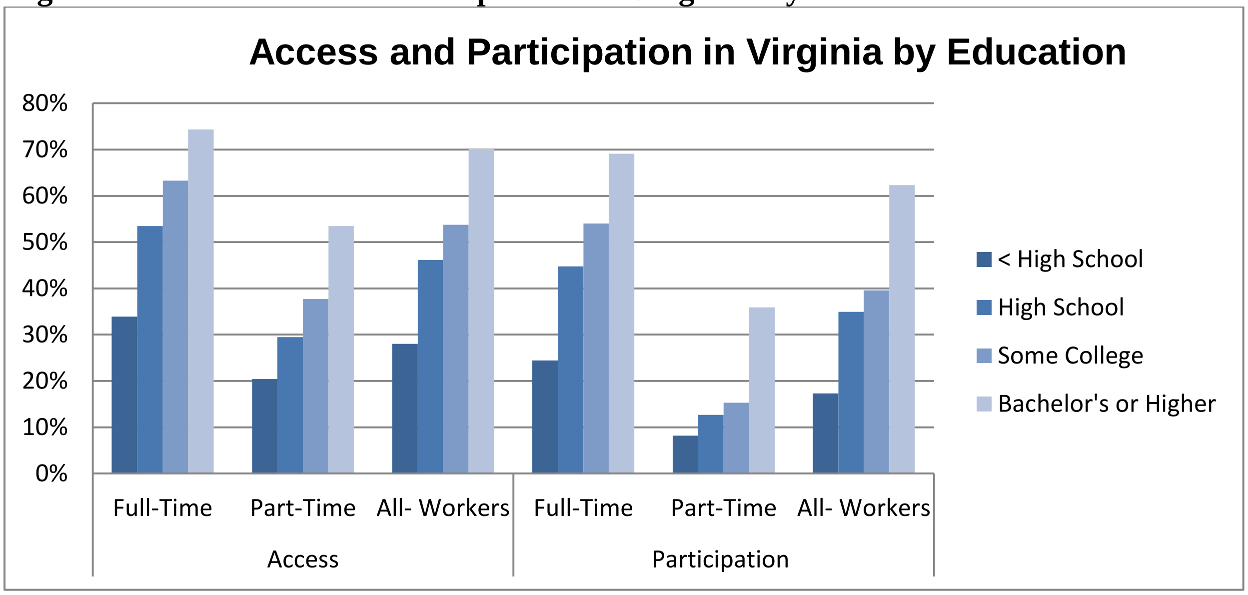
Note: The top income group is excluded for part-time workers due to low sample size.
Source: The Pew Charitable Trusts.

[55] See Appendix C.
[56] See Appendix C.
[57] *The Distribution of Major Tax Expenditures in the Individual Income Tax System*, Congressional Budget Office, accessed Sept. 16, 2015, https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/43768_DistributionTaxExpenditures.pdf. Higher average wages in a business may make offering a retirement plan and other benefits more attractive, in part because the associated tax incentives are generally larger for higher earners.
[58] *The Precarious State of Family Balance Sheets*, The Pew Charitable Trusts, January 2015, http://www.pewtrusts.org/~/media/assets/2015/01/fsm_balance_sheet_report.pdf. See also *Ups and Downs: Does the American Economy Still Promote Upward Mobility?* Steven J. Rose and Scott Winship, The Pew Charitable Trusts, June 2009, http://www.pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/emp20ups20and20downs20full20reportpdf.pdf.
[59] Low lifetime earners may also require less in savings to maintain their pre-retirement standard of living because of Social Security's progressive benefit formula.

Education:

- Workers with lower educational attainment levels tend to have lower rates of access and participation than those with higher rates of educational attainment.[60]
- Virginia has higher rates of educational attainment amongst its workers than the U.S. overall. Thirty-nine percent of Virginia's full-time workers have at least a bachelor's degree or higher compared to 34 percent for the nation as a whole.
- Education can affect retirement plan access and participation in multiple ways. Education typically contributes to economic outcomes such as job quality and income.[61]
- Education also ties into financial literacy and the willingness to participate in a retirement plan.[62]

Figure 18 – Access and Participation in Virginia by Education



Source: The Pew Charitable Trusts.

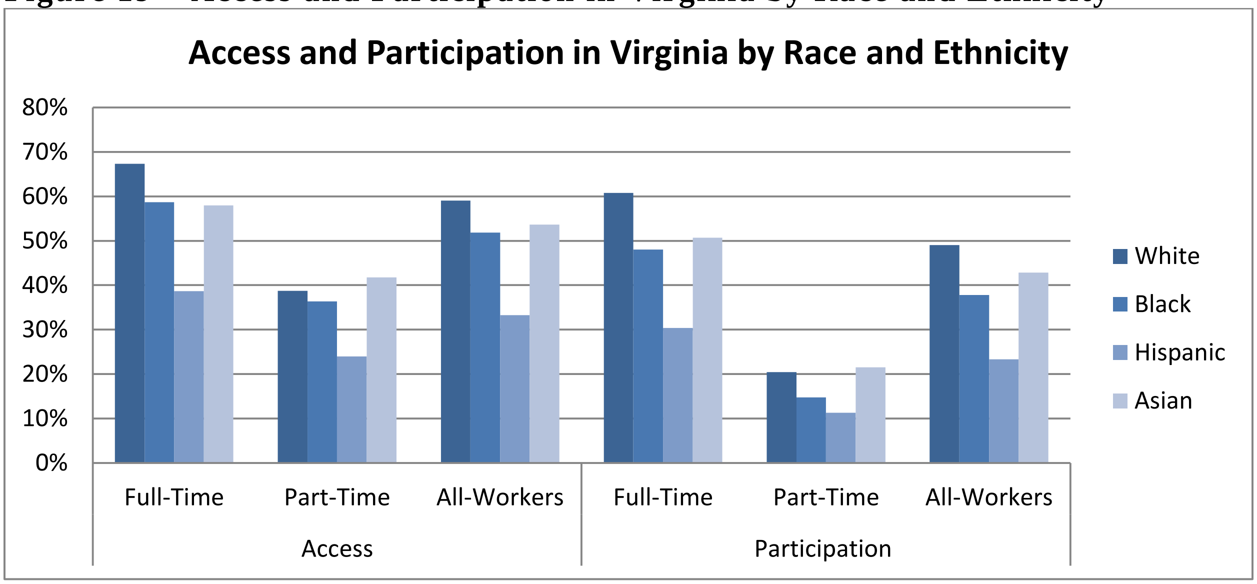
Race and ethnicity:

- Hispanic, black, and Asian employees tend to have lower rates of access to, and participation in, retirement plans than white employees.[63]

[60] See Appendix C.
[61] *The College Payoff: Education, Occupations, Lifetime Earnings*, Anthony P. Carnevale, Stephen J. Rose, and Ban Cheah, Georgetown University Center on Education and the Workforce, 2011, accessed Sept. 16, 2015, https://repository.library.georgetown.edu/handle/10822/559300. Note that the differences in lifetime earnings cannot be wholly attributed to the degree itself and may in part reflect the underlying capabilities and characteristics of those individuals obtaining additional formal education.
[62] *How Ordinary Consumers Make Complex Economic Decisions: Financial Literacy and Retirement Readiness*, Annamaria Lusardi and Olivia S. Mitchell, National Bureau of Economic Research, 2009, Working Paper No. 15350, http://www.nber.org/papers/w15350.pdf. *Do Financial Literacy and Mistrust Affect 401(k) Participation?* Julie R. Agnew et al., Center for Retirement Research at Boston College (brief), 2007, p. 7–17, http://crr.bc.edu/wp-content/uploads/2007/11/IB_7-17.pdf.
[63] See Appendix C.

- The Pew Charitable Trusts data shows that Virginia has substantially more black and fewer Hispanic workers than the U.S. overall.[64] For example, 17 percent of full-time and 18 percent of part-time workers in Virginia are black. Nationally, only 10 percent and 11 percent of workers identify as black, respectively. Hispanics make up only 8 percent of full-time and 9 percent of part-time workers in Virginia. Across the U.S., Hispanics make up 16 percent of full-time workers and 17 percent of part-time workers.[65]
- In addition to economic considerations, race and ethnicity may affect retirement savings behavior in other ways, such as lower levels of trust and comfort with financial institutions and the investment process in general.[66]

Figure 19 – Access and Participation in Virginia by Race and Ethnicity



Source: The Pew Charitable Trusts.

Age:

- Relatively older workers tend to have greater rates of access and participation than relatively younger workers.
- On average, younger workers have less income than older ones; saving for retirement might not be reasonable or rational from a life cycle perspective.[67] Debt may also be a concern. Although the share of younger households—those younger than 35—holding

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[64] See Appendix C.

[65] See Appendix C.

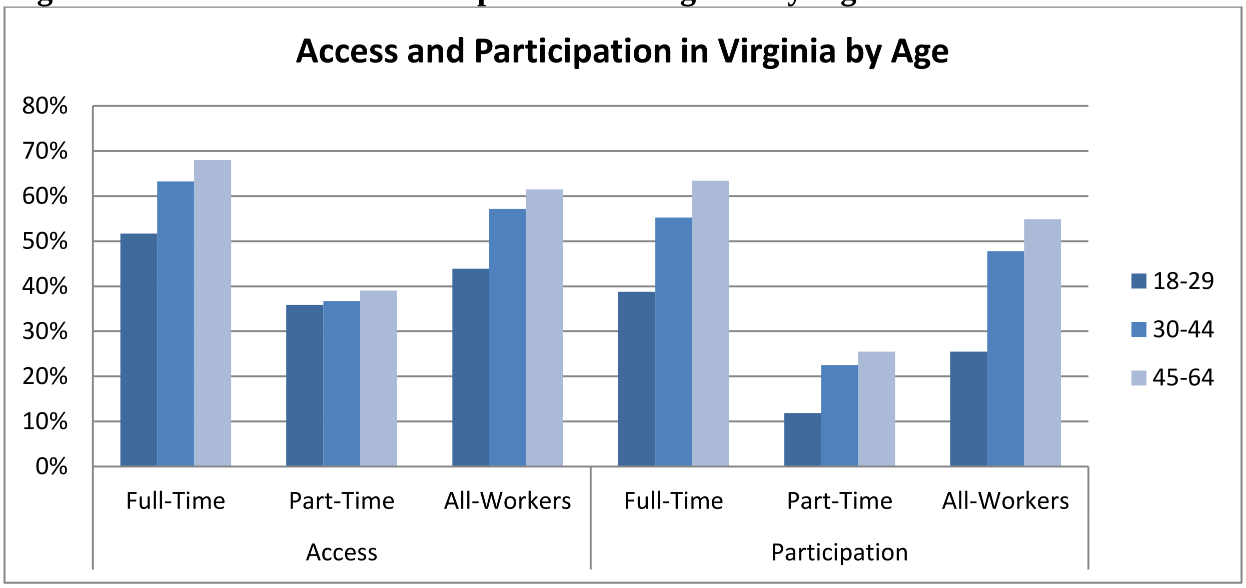
[66] *The Ariel/Schwab Black Investor Survey: Saving and Investing Among Higher Income African-American and White Americans*, Ariel Investments LLC/The Charles Schwab Corp., 2008, accessed Sept. 16, 2015, https://www.arielinvestments.com/landmark-surveys/.

[67] "Smoothing the Path: Balancing Debt, Income, and Saving for the Future," Scott A. Wolla, Federal Reserve Bank of St. Louis, November 2014, *Page One Economics Newsletter*, p. 1–5, https://research.stlouisfed.org/pageone-economics/uploads/newsletter/2014/PageOne1114NEW.pdf; *Lifetime Earnings Patterns, The Distribution of Future Social Security Benefits, and the Impact of Pension Reform*, Barry Bosworth, Gary T. Burtless, and C. Eugene Steuerle, Center for Retirement Research at Boston College, http://www.urban.org/research/publication/lifetime-earnings-patterns-distribution-future-social-security-benefits-and-impact-pension-reform/view/full_report.

debt is lower than that among many older age groups, these households have the highest median dollar amount of unsecured debt.[68]

- Younger workers also might have different saving priorities.[69] For example, some may be more interested in saving for a house, financing education, or building personal liquidity.
- Older workers with more wealth and income and a clearer focus on retirement might be expected to more frequently seek employment at a firm with a retirement plan and participate when given the opportunity.

Figure 20 – Access and Participation in Virginia by Age



Source: The Pew Charitable Trusts.

Gender:

- Women and men tend to have similar rates of access and participation overall.[70]
- Virginia's workers have a similar gender distribution as the U.S overall.
- A higher proportion of women are employed part-time, and part-time workers tend to have less access to employer-sponsored retirement plan options than full-time workers, meaning women have lower overall access and participation when looking at all workers.[71]

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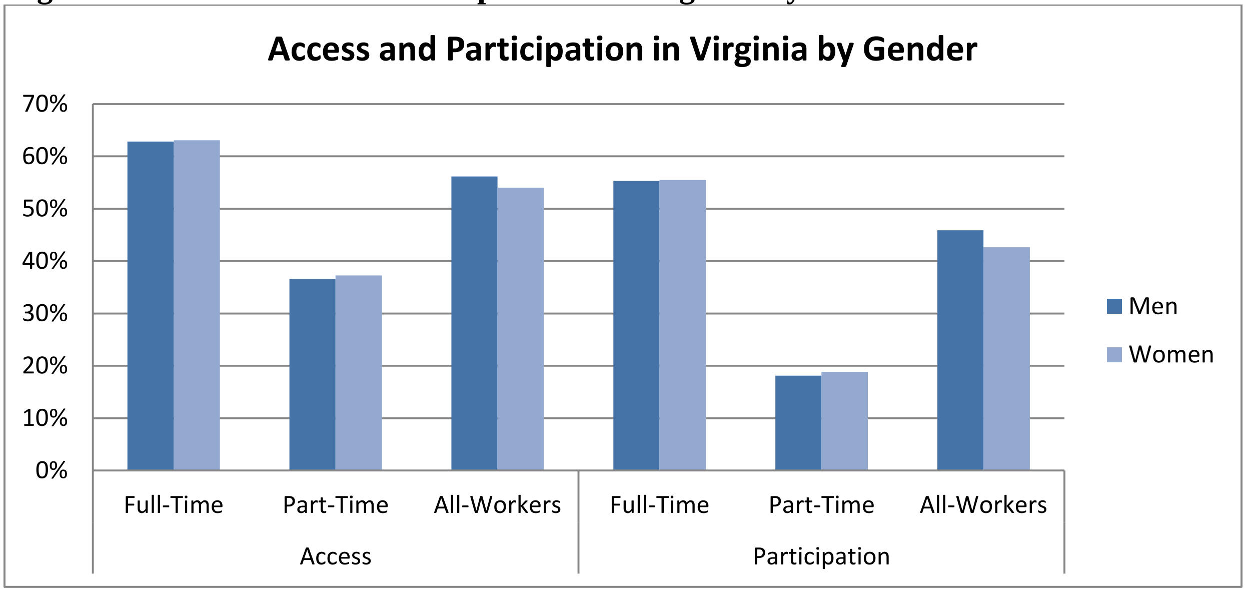
[68] *Household Debt in the U.S.: 2000 to 2011*, Marina Vornovytskyy, Alfred Gottschalck, and Adam Smith, U.S. Census Bureau, 2013, https://www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf.
[69] "What Determines 401(k) Participation and Contributions?" Alicia H. Munnell, Annika Sunden, and Catherine Taylor, 2001/2002, *Social Security Bulletin* 64, no. 3, p. 64–75, http://ssa.gov/policy/docs/ssb/v64n3/v64n3p64.pdf.
[70] See Appendix C.
[71] See Appendix C.

Figure 21 – Access and Participation in Virginia by Gender



Source: The Pew Charitable Trusts.

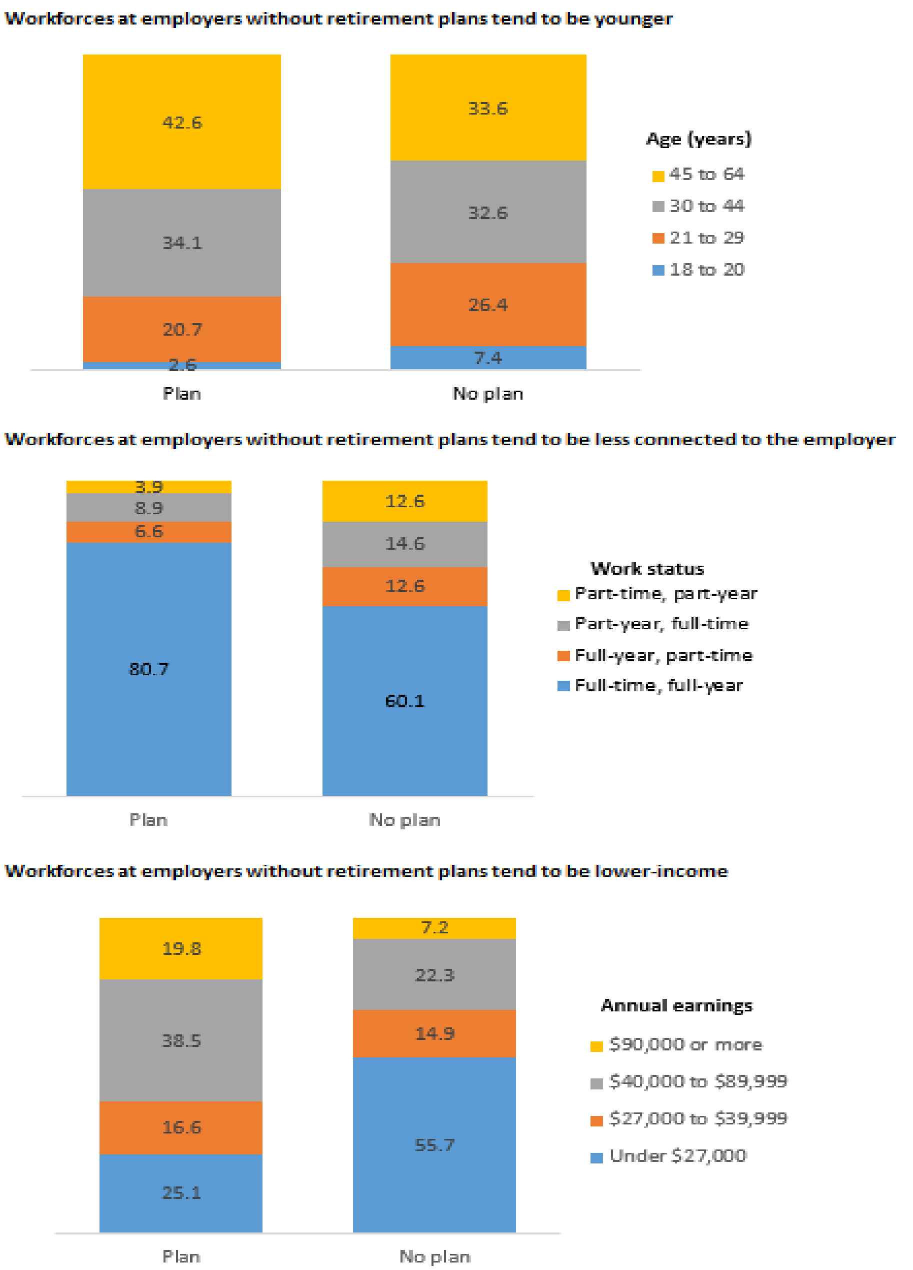
Workforces Differ Between Employers with Retirement Plans and Those Without

CPS data paint a similar picture to the BLS data in Figures 12 and 13 with regard to the wage distribution of Virginia workers, and allow insight into the composition of workers at employers with retirement plans and those at employers that do not sponsor retirement plans. Calculations by the Investment Company Institute (ICI) indicate that, nationwide, and in Virginia, workers not offered a retirement plan at their current employer tend to be younger, more likely to work part-time, and lower-income than workers who are offered a plan, as shown in Figure 22.[72] These factors suggest that workers not currently offered a retirement plan at work may face other immediate financial stresses or competing savings goals related to the status of their employment.

[72] ICI tabulations of Current Population Survey data. See "Who Gets Retirement Plans and Why, 2013," Peter Brady and Michael Bogdan, *ICI Research Perspective 20, no. 6* (October 2014), https://www.ici.org/pubs/research/perspective.

Figure 22 – Workforces at Employers with Retirement Plans Differ from Those Without Plans

Percentage of private-sector wage and salary workers age 18 to 64 in Virginia, 2012–2014



Note: The data indicate there are approximately 2.9 million private-sector wage and salary workers age 18 to 64 in Virginia; about 1.3 million (45 percent) of these workers are at employers that do not offer retirement plans.
Source: Investment Company Institute tabulations of the Current Population Survey.

One-third of private-sector wage and salary workers in Virginia at employers that do not offer a retirement plan are younger than 30, compared to less than one-quarter of workers at employers that offer plans (Figure 22). These younger workers likely are focused on other savings goals, such as saving for a home, to start a family, or for education.[73] They may also have competing financial pressures, such as repaying student debt.[74] These other goals may significantly limit their ability to contribute to a workplace retirement plan if they are offered one and may make it less likely for younger workers to begin saving for retirement outside of employment.

Forty percent of private-sector wage and salary workers in Virginia at employers that do not offer plans are part-time or part-year, compared to only 19 percent of workers at employers that offer plans (Figure 22). Part-time, part-year work in a given year may be an indicator of financial stress, whether it is temporary or ongoing. If these workers usually work part-time or part-year, they are unlikely to be able to save for retirement because they tend to have low earnings.[75] In addition, such low lifetime earners likely will receive a high earnings replacement rate from Social Security.[76] If some of these workers who are currently working part-time or part-year usually work full-time or full-year, then their current employment situation puts their earnings below their typical earnings, which again, suggests these individuals may be less likely to be able to reduce current consumption further in order to save for retirement (or for any reason). In either event, financial stresses experienced by part-time, part-year workers make them less likely to be focused on saving for retirement in the current year and at their current employers.

Fifty-six percent of private-sector wage and salary workers in Virginia at employers that do not sponsor retirement plans earn less than $27,000, compared to 25 percent of workers at employers offering retirement plans (Figure 22). One-fifth of Virginia workers who report that they do not have retirement plans at their current employers have annual salaries less than about $10,100, and half have annual incomes of $24,000 or less (Figure 23). Focusing on the 60 percent of eligible workers who are full-time, full-year workers, one-fifth of those workers have annual salaries of less than $20,500 and one-half have incomes of $35,000 or less. These low income levels suggest that many of these workers would be hard-pressed to make contributions to a retirement plan.

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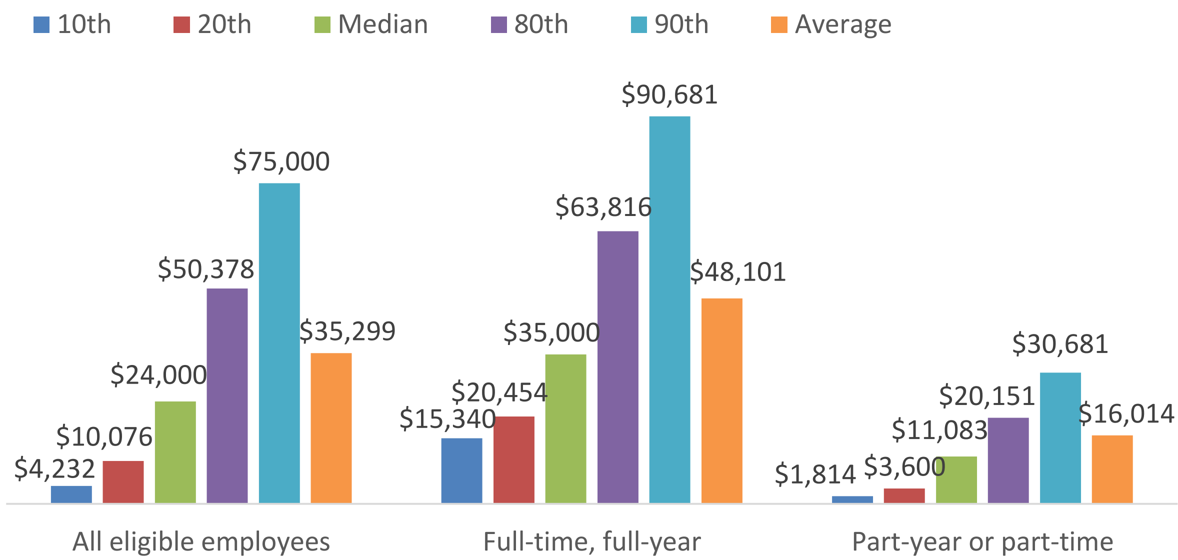
[73] Analysis of 2013 Survey of Consumer Finances data finds that 32 percent of households age 21 to 29 indicated that their primary savings goal was home purchase, for the family, or education, while 13 percent of households this young indicated retirement was their primary savings goal. See *2016 Investment Company Fact Book: A Review of Trends and Activities in the U.S. Investment Company Industry, 56th Edition* (Figure 7.2), Investment Company Institute, 2016, www.icifactbook.org.

[74] Federal Reserve Board analysis of 2013 Survey of Consumer Finances data finds that nearly four in 10 young families (those with a head of household younger than age 40 at the time of the survey) had education debt outstanding in 2013. See "Changes in U.S. Family Finances from 2010 to 2013: Evidence from the Survey of Consumer Finances," Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Kevin B. Moore, John Sabelhaus, Jeffrey Thompson, and Richard A. Windle, September 2014, *Federal Reserve Bulletin* 100, p. 26, www.federalreserve.gov/pubs/bulletin/2014/pdf/scf14.pdf.

[75] See *Supplemental Tables for Who Gets Retirement Plans and Why, 2013* (Tables 41 and 42), Brady and Bogdan, https://www.ici.org/pressroom/news/14_news_who_gets_retire. See Appendix A of this report for the full study.

[76] Social Security replaces a much higher fraction of pre-retirement earnings for lower-income workers. For example, the projected first-year replacement rate (mean scheduled Social Security first-year benefits as a percentage of average inflation-indexed career earnings for retired workers in the 1960–1969 birth cohort) was 86 percent for the lowest lifetime household earnings quintile; 65 percent for the second-lowest quintile; and 55 percent for the middle quintile. See "Alt. Replacement Rate B" in *CBO's 2015 Long-Term Projections for Social Security: Supplemental Data,* Congressional Budget Office, December 2015, https://www.cbo.gov/publication/51047.

Figure 23 – Many Virginia Workers Without Workplace Retirement Plans Have Low Wages
Percentiles and average of annual wage and salary earnings, 2012–2014



Note: ICI tabulations indicate that 60 percent of eligible Virginia workers are full-time, full-year, and 40 percent are part-time or part-year. These data represent nearly 1.3 million private-sector workers age 18 to 64 in Virginia who report that their employers do not offer retirement plans.
Source: Investment Company Institute tabulations of the Current Population Survey.

Reflecting on the Background Information

The question of whether Americans are preparing financially for retirement is difficult to answer, because each household is different and each household relies to different degrees on the aforementioned fundamental components of the U.S. retirement system.

In attempting to determine the status of Americans' retirement preparation, three distinct metrics are used to judge the success of the U.S. retirement system, in general: (1) measurement of retirement accumulations, (2) determination of retirement savings adequacy, and (3) measurement of access to retirement savings vehicles.

Industry and other stakeholder groups have noted that there is a life cycle to saving for retirement, and recognize that using a snapshot of retirement plan coverage that includes workers of all ages paints a picture that may overstate the "coverage gap."

ICI's interpretation of the data shows that virtually all private-sector workers are covered by Social Security and, by design, for lower-earning workers, Social Security has evolved to function like a pension plan. Metrics judging retirement plan accumulations or coverage that ignore the role of Social Security misjudge households' preparations for retirement.

Older households without retirement accumulations (DB plans, DC plans, or IRAs) face significant financial stresses that likely preclude them from being able to save for retirement beyond Social Security.

Workers without access to workplace retirement plans have access to traditional or Roth IRAs, including *my*RAs, which they can establish for either themselves or their spouses. Improving financial literacy and worker awareness of the retirement savings vehicles available could promote retirement saving.

As individuals enter their retirement years with inadequate savings, the potential increases for greater reliance on social service programs funded by taxpayers. By enabling and incentivizing individuals to save for their own retirement, governments may potentially be able to moderate the extent to which a resolution of the shortfall relies on taxpayer funds down the road.

Meeting Savers Where They Are

Although consumer wages are an issue of concern, they are not the only driving force behind retirement savings. For example, according to EBRI, pre-tax or tax-deductible contributions are valued across all brackets of the income distribution.[77] The majority of respondents in every income bracket agree that it is "very important" to have the ability to deduct retirement contributions directly from their paycheck.

In order to change retirement insecurity, industry experts contend that stakeholders must meet potential savers where they are by using the tools learned through behavioral economics. This includes access to payroll deduction plans, automatic enrollment and escalation, easy to understand plans and choices, and the ability to convert funds into lifetime income streams.

The Federal, Legal and Regulatory Landscape

One of the major considerations facing state initiatives related to private retirement savings opportunities involves unresolved legal issues. Primarily, states have sought clarity about whether initiatives would be subject to the provisions of ERISA. ERISA sets minimum standards for most voluntary private industry pension plans to provide protection for the individuals in the plans.[78] Generally, retirement plans established or maintained by governmental entities, churches for their employees, plans maintained solely to comply with workers' compensation, unemployment or disability laws, plans maintained outside the United States for the benefit of nonresident aliens, or excess benefit plans are not covered by ERISA. Any plan to which ERISA applies is subject to additional reporting, operating, and other requirements. These additional requirements, which aim to protect individuals who participate in an ERISA-covered plan, can also result in higher costs and more complex plan administration. Therefore, many states have voiced concerns over the potential application of ERISA provisions to certain approaches, as well as a lack of understanding about how ERISA will apply to other approaches. Some states

[77] "The Impact of Modifying the Exclusion of Employee Contributions for Retirement Savings Plans From Taxable Income: Results From the 2011 Retirement Confidence Survey," Jack VanDerhei and Employee Benefit Research Institute, March 2011, Notes, Vol. 32, No. 3, p. 5, https://www.ebri.org/pdf/notespdf/EBRI_Notes_03_Mar-11.K-Taxes_Acct-HP.pdf.
[78] See Employee Retirement Income Security Act (ERISA) web page, United States Department of Labor, https://www.dol.gov/general/topic/retirement/erisa.

also have begun thinking about how federal securities laws might apply in the context of state-run savings programs.

Based on states' concerns, the federal government made an effort to clarify ERISA's impact on various state initiatives for private retirement savings. Through this effort, the U.S. Department of Labor (DOL) issued both an interpretive bulletin in November 2015 and then a final rule on the topic in August 2016. The Securities and Exchange Commission (SEC) has yet to formally rule on the federal securities law implications of such programs. As a result of the guidance emerging from DOL, several states have taken steps to implement non-ERISA state sponsored plans

DOL Final Rule[79]

The final rule, which became effective October 31, 2016 and is included as Appendix E, largely adhered to the rule proposed in 2015. The final rule established a path for states to administer a payroll deduction IRA savings program that would be exempt from ERISA. In doing so, the DOL stated a number of criteria that would need to be satisfied in order for an initiative to qualify under the safe-harbor provisions. Those requirements are as follows:[80]

- The plan must be administered by a state and under state law;
- The state must be responsible for the investment of employee savings, as well as the selection of alternative investment options available to plan participants;
- The state must be responsible for securing the payroll deductions and employee savings;
- The state must adopt provisions to ensure plan participants know their rights under the plan, as well as provisions related to the enforcement of those rights;
- Employer participation in the plan must be required by state law;
- Employee participation in the plan must be voluntary;
- An employer's activities under the plan must only be "ministerial" in nature (e.g., collecting and remitting payroll deductions, providing plan information to employees, maintaining records, and other necessary administrative functions);
- An employer is not permitted to contribute employer funds;
- A state may contract with a third party to administer the plan, so long as the state retains full responsibility for the plan's operation and administration; and
- Auto-enrollment and auto-escalation are permitted only if required by state law, employees are given adequate notice to opt out, and the employer is required to auto-enroll employees.

Note that the final rule only addressed a payroll deduction IRA-type savings plan and did not address any of the other retirement savings models that states have adopted (e.g., a marketplace, a multiple employer plan, or "MEP," administered by the state, or a prototype plan approach). Application of the final DOL safe harbor ultimately will depend on the facts and circumstances

[79] See Appendix E.
[80] 29 C.F.R. Part 2510, http://www.ecfr.gov/cgi-bin/text-idx?SID=764659b910efc31c9cb8733f8c54116f&mc=true&node=pt29.9.2510&rgn=div5.

surrounding any particular state law, a determination that ultimately would rest with a court of law.

ERISA Preemption

Like the application of the final DOL safe-harbor regulation, courts will ultimately make the determination of whether ERISA preempts a state law establishing a retirement savings program for private sector workers.[81] Section 514 of ERISA generally provides that Title I of ERISA supersedes any state laws insofar as it relates to any employee benefit plan described in section 4(a) of ERISA. DOL explained in the preamble to the proposed safe harbor regulation that "the objective of the proposed safe harbor is to diminish the chances that, if the issue were ultimately litigated, the courts would conclude that state payroll deduction savings arrangements that comply with the rule are preempted by ERISA."[82] DOL also noted that "courts' determinations would depend on the precise details of the statute at issue, including whether that state's program successfully met the requirements of the safe harbor."[83] A state-run savings program could be preempted by ERISA, even if it ultimately meets all conditions of the DOL ERISA safe harbor. A finding of preemption would have significant ramifications, including requiring a substantial overhaul of the program or its possible termination.

Prohibited Transaction Rules

Another consideration is that the Internal Revenue Code's (IRC or the Code) prohibited transaction rules would apply to any IRAs created under a state-based program making use of the DOL safe harbor regulation, as explained in the proposed regulations.[84] In this respect, regardless of whether ERISA applies, a state offering an IRA-based program for private-sector workers could become a fiduciary or other type of disqualified person under the Internal Revenue Code.[85] The Code contains prohibited transaction rules for IRAs parallel to ERISA's prohibited transaction rules for employer-sponsored plans.[86] In general, these prohibited transaction rules prohibit disqualified persons from entering into (or participating in) transactions involving the plan or IRA that result in any benefit (direct or indirect) to the disqualified person.

The management of program assets or the selection of private sector service providers to invest assets or provide administrative services would be fiduciary activities.[87] A state could be found to participate in a prohibited transaction engaged in by such service providers if the state merely

[81] It is possible that an interested party, such as an employer within a state that becomes subject to a state law mandate, could bring a legal challenge against the state law on ERISA preemption grounds.
[82] 80 Fed. Reg. 72009.
[83] 80 Fed. Reg. 72011.
[84] The DOL acknowledged this in its proposed regulation providing a safe harbor from ERISA ("by limiting the safe harbor to programs that use [IRAs], the proposal incorporates the applicable protections under the Code, including the prohibited transaction provisions"). See 80 Fed. Reg. 72009.
[85] A "disqualified person" includes, among other things, a fiduciary to a plan or IRA and a service provider to a plan or IRA. Internal Revenue Code § 4975(e)(2).
[86] See Internal Revenue Code § 4975.
[87] A fiduciary would include any person who exercises any discretionary responsibility in the administration of the plan or IRA. Internal Revenue Code § 4975(e)(3).

selects and monitors the provider and makes discretionary decisions, for example, with respect to the investments offered to participating workers. Prohibited transaction rule violations result in significant excise tax penalties, payable by any disqualified person participating in the transaction.

ERISA's prohibited transaction rules have recently received intense focus with the issuance of new DOL rules defining who is a fiduciary by virtue of providing investment advice for a fee.[88] The DOL rule expressly applies to advice to IRAs (and IRA owners) not governed by Title I of ERISA.[89] The scope of interactions and activities characterized as advice by the rule is very broad, and depending on the particular circumstances, includes involvement in distribution decisions, selecting investment options (including default investments), and certain interactions with call center representatives, among other activities. To engage in or be associated with activities covered by the rule, one must follow a complex compliance regime. With this in mind, the Commonwealth should consider the potential implications of becoming a fiduciary itself, and the possibility of being considered to be associated with the engagement in prohibited transactions by any service providers that the Commonwealth retains.

DOL Interpretive Bulletin 2015-02[90]

Contemporaneous with the proposal leading up to its final rule, DOL also published the related Interpretive Bulletin 2015-02 (Bulletin). The Bulletin outlined DOL's views on the models not addressed in the proposed or final rules: the marketplace approach, the MEP approach, and the prototype plan approach. Generally, the Bulletin intended to clarify for states that ERISA leaves room for these three approaches so long as employers participate voluntarily and ERISA's provisions apply to any underlying plans provided.[91] Furthermore, the Bulletin made clear DOL's position that ERISA allows a state to administer a MEP for private sector workers.[92] The interpretive bulletin is included as Appendix F.

Federal Securities Laws

In addition to ERISA considerations, state-sponsored programs also face the possibility of having to comply with many requirements of the federal securities laws. In particular, a Commonwealth-run retirement savings program could be required to register with the SEC as an investment company under the Investment Company Act of 1940. Certain interests in a trust or other funding vehicles holding the program's assets could be required to be registered with the SEC under the Securities Act of 1933, and any governing board or other state officials involved in program governance could be required to register with the SEC as investment advisers under the Investment Advisers Act of 1940. As a result, there could be significant compliance, reporting and disclosure obligations associated with any program, which could add considerable

[88] Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, 81 Fed. Reg. 20946.
[89] 81 Fed. Reg. 20946.
[90] See Appendix F.
[91] *Fact Sheet: State Savings Programs for Non-Government Employees*, United States Department of Labor, accessed June 6, 2016.
[92] *Fact Sheet: State Savings Programs for Non-Government Employees,* United States Department of Labor, accessed June 6, 2016.

expense to the program's operation, although using a third party administrator may mitigate some of these requirements or reassign them to the administrator. This will need to be considered if the Commonwealth begins to develop a program.

Incentives and Efforts at the Federal Level

For years, the federal government has encouraged retirement savings in different ways and for different populations. The federal government has done so by creating savings vehicles through the IRC. Perhaps the most common of these vehicles is the 401(k), which is set out in 26 U.S.C. § 401(k) and provides for a tax-advantaged defined contribution plan that allows for employee and employer contributions into accounts with a number of investment options. In addition to a variety of similar vehicles, the federal government has also found other ways to promote retirement savings. Tax credits, *my*RA, and federal budget proposals are recent examples. In a June 2016 report, the Bipartisan Policy Center Commission on Retirement Security and Personal Savings recommended several reforms, including creating a new stream-lined option, improving access to existing programs, and new tax incentives to achieve improved access.[93]

The following information provides a brief overview of some of the most common federal retirement savings incentives.

401(k) plans

A traditional 401(k) plan is the dominant retirement savings vehicle in the private sector and continues to be one of the most widely used retirement savings incentives created by the federal government. Generally, a 401(k) plan is an employer-sponsored defined contribution plan that permits an employee to contribute a portion of his or her earnings into a retirement account, pre-tax or post-tax depending on the design. Furthermore, a 401(k) plan permits an employer to make matching or nonelective contributions on a worker's behalf.

The earliest version of today's 401(k) plans was created by the Revenue Act of 1978, but did not become effective until January 1, 1980.[94] At that time, the Revenue Act contained a provision that allowed an employee to avoid immediate taxation on earnings if he or she elected deferred compensation.[95] Today there are multiple variations of 401(k) plans. For example, there are traditional 401(k) plans, Roth 401(k) plans, safe harbor 401(k) plans, and SIMPLE 401(k) plans, among others.[96] However, all of the variations adhere to the same general concept: an employer-sponsored plan that permits an employee to make contributions towards retirement into a tax-advantaged account, as well as receive matching or nonelective contributions from the employer.

[93] See *Securing Our Financial Future: Report of the Commission on Retirement Security and Personal Savings (*p. 7), June 2016, http://cdn.bipartisanpolicy.org/wp-content/uploads/2016/06/BPC-Retirement-Security-Report.pdf.
[94] *History of 401(k) Plans: An Update*, Employee Benefit Research Institute, February 2005, https://www.ebri.org/pdf/publications/facts/0205fact.a.pdf.
[95] *History of 401(k) Plans: An Update*, Employee Benefit Research Institute, February 2005, https://www.ebri.org/pdf/publications/facts/0205fact.a.pdf.
[96] *401(k) Plan Overview*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Sponsor/401k-Plan-Overview.

There are annual limits, however, on the amount of money an individual can contribute to his or her 401(k) account. The IRS reviews these limits annually and applies statutory inflation adjustments. There are also catch-up contribution provisions that apply to certain individuals based on age.

<u>403(b) plans</u>
A 403(b) retirement plan is another widely used retirement savings vehicle. The history of 403(b) plans can be traced back to the 1940s, but they were not officially formalized by the federal government until 1958 when Congress enacted 26 U.S.C. § 403(b).[97]

One of the unique characteristics of a 403(b) plan is that only specific individuals are eligible to participate. According to the IRS, the following types of employees are eligible to participate in a 403(b) plan:[98]

- Employees of tax-exempt organizations established under § 501(c)(3) of the IRC.
- Employees of public school systems who are involved in the day-to-day operations of a school.
- Employees of cooperative hospital service organizations.
- Civilian faculty and staff of the Uniformed Services University of the Health Sciences (USUHS).
- Employees of public school systems organized by Indian tribal governments.
- Certain ministers if they are:
    - Ministers employed by § 501(c)(3) organizations.
    - Self-employed ministers. A self-employed minister is treated as employed by a tax-exempt organization that is a qualified employer.
    - Ministers (chaplains) who meet both of the following requirements.
        - They are employed by organizations that are not § 501(c)(3) organizations.
        - They function as ministers in their day-to-day professional responsibilities with their employers.

A 403(b) plan may include annuity contracts, a custodial account invested in a mutual fund or a retirement account set up for church employees.[99] Roth accounts may also be offered in a 403(b) plan.[100]

As with a 401(k) plan, contributions made to a 403(b) plan are tax-advantaged, and there are annual limits on the contributions. The IRS reviews these limits annually and applies statutory

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97 *The World of 403(b) Retirement Plans: A guide to best practices for plan fiduciaries*, Mass Mutual Financial Group, 2015, https://wwwrs.massmutual.com/retire/pdffolder/rs4655.pdf.
98 *Retirement Topics – Who Can Participate in a 403(b) Plan?* Internal Revenue Service, updated October 18, 2016, accessed November 3, 2016, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-who-can-participate-in-a-403b-plan?_ga=1.114829253.356833817.1452183786.
99 *Publication 571: Tax-Sheltered Annuity Plans (403(b)) Plans*, Internal Revenue Service, revised January 2016, https://www.irs.gov/pub/irs-pdf/p571.pdf.
100 *Choosing a Retirement Plan: 403(b) Tax-Sheltered Annuity Plan*, Internal Revenue Service, accessed November 10, 2016, https://www.irs.gov/retirement-plans/choosing-a-retirement-plan-403b-tax-sheltered-annuity-plan.

inflation adjustments. There are also catch-up contribution provisions that apply to certain individuals based on age.

Individual Retirement Arrangements: 408(a) plans – Traditional Individual Retirement Account (IRA)

A traditional IRA is set up by the owner, rather than an employer. Earnings are tax-deferred until distribution, at which point a distribution is treated as ordinary income.[101] Traditional IRAs can be established at a bank, credit union, or other financial institution as defined by IRC § 408(n).[102] An individual under age 70½ by the end of a calendar year and who received taxable compensation may contribute to a traditional IRA even if covered by an employer plan.[103] However, contributions generally are only eligible for a tax deduction if the owner or spouse does not have an employer-sponsored retirement plan, depending on the individual's modified adjusted gross income.[104]

Individual Retirement Arrangements: 408(b) plans – Individual Retirement Annuity

An individual retirement annuity (IRAnnuity) is issued by an insurance company. Generally, a traditional IRAnnuity, Roth IRAnnuity, and a SEP IRAnnuity use the same contribution and distribution structures as a traditional IRA, Roth IRA, or SEP IRA, respectively, described in other sections.[105]

Individual Retirement Arrangements: 408A plans – Roth Individual Retirement Account (IRA)

A Roth individual retirement account (Roth IRA) is set up by the owner at a financial institution under IRC § 408(n), and earnings are tax-deferred, like a traditional IRA. However, distributions are tax-free if qualified, contributions are not tax-deductible, and the account owner must meet income requirements. Additionally, the owner can make contributions to the account after reaching age 70½. A single contribution limit is applied to all traditional and Roth IRAs an individual owns.[106]

*my*RA

One of the more recent incentives created by the federal government to encourage retirement savings is the My Retirement Account (*my*RA®) program. First announced in 2014, *my*RA is promoted as a "simple, safe, affordable" option through which anyone with earned income and whose Modified Adjusted Gross Income is within applicable Roth IRA limits[107] can save for

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[101] *Publication 590-A: Traditional IRAs*, Internal Revenue Service, accessed November 3, 2016, https://www.irs.gov/pub/irs-pdf/p590a.pdf.
[102] *Publication 590-A: Traditional IRAs*, Internal Revenue Service, accessed November 3, 2016, https://www.irs.gov/pub/irs-pdf/p590a.pdf.
[103] *Publication 590-A: Traditional IRAs*, Internal Revenue Service, accessed November 3, 2016, https://www.irs.gov/pub/irs-pdf/p590a.pdf.
[104] *Publication 590-A: Traditional IRAs*, Internal Revenue Service, accessed November 3, 2016, https://www.irs.gov/pub/irs-pdf/p590a.pdf.
[105] http://www.retirementdictionary.com/definitions/individualretirementannuityirannuity
[106] *Roth IRAs*, web page, Internal Revenue Service, updated October 27, 2016, accessed November 3, 2016, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits.
[107] *Summary of key Roth IRA features*, *my*RA website, United States Department of the Treasury, accessed November 3, 2016, https://myra.gov/roth-ira/.

retirement.[108] As a way to further promote participation in *my*RA, the U.S. Department of the Treasury has incorporated the following features into the program:[109]

- No costs or fees;
- No complicated investment options; and
- No risk of losing money since contributions are invested in U.S. Treasury bonds.

A *my*RA account is a Roth IRA, designed as a "starter" retirement savings account.[110] Money is contributed on an after-tax basis in whatever amount a participant chooses, up to the limit on IRA contributions.[111] Contributions are invested in United States Treasury retirement savings bonds, which are backed by the U.S. Department of the Treasury.[112] Since contributions to a *my*RA have already been taxed, there is no tax paid on the contributions upon withdrawal.[113] Earnings may also be withdrawn tax-free if certain requirements are met, such as the length of time the money has been invested and the age of the contributor.

There is a limit on the total amount that can be accumulated in a *my*RA. It will earn interest until your account reaches $15,000 or 30 years after the account is first funded, whichever comes first, at which point the money will automatically be rolled into a private-sector Roth IRA and contributions can continue.[114]

Use of the *my*RA program was initially expected to be high, at least among the younger population. Treasury indicates that in the past year of myRA being available nationwide, there have been over 15,000 accounts opened as of October 30, 2016.[115]

Treasury has indicated that states have approached staff regarding use of the myRA in their state-sponsored plan, and Treasury considers this a viable possibility.

Individual Retirement Arrangements: 408(k) plans – Simplified Employee Pensions

Another retirement savings account created by the federal government is the 408(k) plan, more commonly known as a Simplified Employee Pension (SEP) plan. These plans, also called SEP-IRAs, allow employers to contribute to a traditional IRA. They are aimed at small businesses but

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[108] *my*RA website, United States Department of the Treasury, accessed June 6, 2016, https://myra.gov/.

[109] *my*RA website, United States Department of the Treasury, accessed June 6, 2016, https://myra.gov/.

[110] *my*RA website, United States Department of the Treasury, accessed September 28, 2016, https://myra.gov/get-answers/.

[111] In 2016, the annual limit of contributions to a *my*RA account was $5,500 (or $6,500 for individuals 50 years of age or older at the end of the year). *How It Works*, *my*RA website, United States Department of the Treasury, accessed June 6, 2016, https://myra.gov/how-it-works/.

[112] During the month of May 2016, *my*RA accounts earned an APR-equivalent of 1.75%. *How It Works*, *my*RA website, United States Department of the Treasury, accessed June 6, 2016, https://myra.gov/how-it-works/.

[113] *About* my*RA*, *my*RA website, United States Department of the Treasury, accessed November 4, 2016, https://myra.gov/roth-ira/.

[114] *About* my*RA*, *my*RA website, United States Department of the Treasury, accessed June 6, 2016, https://myra.gov/about/.

[115] "America's Poor Still Lack Access to Basic Banking Services", Gillian B. White, The Atlantic, November 30, 2016, accessed December 5, 2016, https://www.theatlantic.com/business/archive/2016/11/americas-underbanked/509138/.

are available to an employer of any size.[116] SEPs are similar to 401(k) plans in that an individual account is set up for each employee, and contributions are placed in the account on behalf of the employee. The contributions made are also tax-advantaged in that they are generally not taxable to the employee and may be deductible for the employer.[117]

Although SEPs look similar to 401(k) plans, there are significant differences. For example, SEPs are much simpler for the employer to administer.[118] An employer that provides a SEP to its employees need not select investment options or perform other responsibilities associated with running a 401(k) plan. Instead, a SEP is essentially an avenue for an employer to make contributions to an IRA for each employee. The employee is then responsible for the investment of the money in his or her account. SEPs generally do not place filing requirements on the employer,[119] which can make the plan more cost effective and less burdensome to provide.

Another major difference is that, unlike a 401(k) plan, a SEP plan only permits employer contributions, not employee contributions.[120] The annual limit of employer contributions is the lesser of 1) 25 percent of an employee's compensation, or 2) $53,000 (for 2015 and 2016).[121]

Furthermore, SEP contributions are not required to be as firmly established as in a 401(k) plan. An employer may contribute different amounts from year to year.[122] This creates flexibility for smaller employers that might experience cash flow issues. However, an employer must contribute equally to all of its SEP-eligible employees.[123] Additionally, an employer offering a SEP cannot offer any other type of retirement plan.[124]

Finally, the eligibility rules for employees are more restrictive in a SEP plan compared to a 401(k) plan. According to the IRS, an employer offering a SEP must cover employees meeting the following requirements in order to be eligible for SEP participation:[125]

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[116] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[117] *SEP Plan FAQs- Contributions*, Internal Revenue Service, accessed November 4, 2016, https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-seps-contributions.
[118] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[119] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[120] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[121] *SEP Contribution Limits (including grandfathered SARSEPs)*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/SEP-Contribution-Limits-including-grandfathered-SARSEPs.
[122] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[123] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[124] *Choosing a Retirement Plan: SEP*, Internal Revenue Service, accessed September 28, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan:-SEP.
[125] *Who Can Participate in a SEP or SARSEP Plan*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Who-Can-Participate-in-a-SEP-or-SARSEP-Plan.

- The employee has reached age 21;
- The employee has worked for the employer in at least three of the last five years; and
- The employee has received at least $600 in compensation from the employer during the year (for 2015 and 2016).

The following additional employees may be offered the SEP, but are not required to be covered:

- Employees covered by a collective bargaining agreement that does not provide for participation in the plan, if retirement benefits were the subject of good faith bargaining;
- Nonresident alien employees who did not earn income from you; or
- Employees who received less than $600 in compensation during the year (subject to cost-of-living adjustments).

Individual Retirement Arrangements: 408(p) plans – SIMPLE Individual Retirement Account (IRA)[126]

A 408(p) plan is another variation on the 401(k), and also another vehicle the federal government uses to encourage retirement savings. A 408(p) plan is more commonly known as a SIMPLE IRA (i.e., a Savings Incentive Match Plan for Employees). Similar to a SEP, SIMPLE IRAs are aimed at small businesses. However, some employers are not permitted to offer a SIMPLE IRA. Generally, an employer must have 100 employees or fewer in order to be eligible to offer a SIMPLE IRA.

Another similarity to a SEP is that a SIMPLE IRA plan is generally less complicated to administer than a 401(k) plan. Furthermore, SEPs and SIMPLE IRAs are similar in that money contributed to the accounts is tax-advantaged as it is not taxable to the employee until it is withdrawn under applicable rules and the employer may deduct the contributions.[127]

Where a SIMPLE IRA differs from other types of plans is in the rules related to contributions. Compared to other plan types, the contribution options available under a SIMPLE IRA are less flexible. An employer essentially has two options from which to choose. The first option is a matching contribution of up to 3 percent. Under this option, an employer only makes the matching contribution if the employee first makes an elective contribution upon which the match is based. Alternatively, an employer may choose to provide a nonelective 2 percent contribution for each eligible employee. Under the second option, even if an employee does not elect to contribute to the plan, the employer must still contribute 2 percent of the employee's pay.

Regardless of the option selected by the employer, an employee always maintains the option to make contributions on his or her own. As with other plan types, however, there are annual limits on such contributions. In 2015 and 2016, the limit was $12,500. There are catch-up contribution provisions that apply to certain individuals based on age, as well.

[126] Discussion in this section largely based on *Choosing a Retirement Plan: SIMPLE IRA Plan*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Choosing-a-Retirement-Plan-SIMPLE-IRA-Plan.

[127] *SIMPLE IRA Plan FAQs- Contributions*, Internal Revenue Service, accessed November 4, 2016, https://www.irs.gov/retirement-plans/simple-ira-plan-faqs-contributions.

457(b) plans[128]

An additional retirement option established by the federal government under the IRC is the 457(b) plan. These plans are deferred compensation plans available to state and local government employees, but not employees of private sector employers. Employees of certain nonprofit entities may also be eligible to participate in a 457(b) plan.

Like many other retirement options under the IRC, contributions to a 457(b) plan can be made on a pretax basis. Contributions can also be made on an after-tax basis if the 457(b) plan is designated to accept Roth contributions. Regardless of how contributions are treated, there are limits on the annual amount a participant may contribute. In 2015 and 2016, the general limit was the lesser of 1) 100 percent of the participant's includible compensation, or 2) $18,000.[129] There are also catch-up contribution provisions that apply to certain individuals based on age.

Retirement Savings Contributions Credit

The Retirement Savings Contributions Credit (commonly referred to as the "Saver's Credit") is a nonrefundable tax credit that can reduce a taxpayer's tax liability as low as, but never below, zero based on contributions made to eligible retirement savings plans. Congress enacted the Saver's Credit as a temporary measure in 2001.[130] In 2006, Congress permanently established the Saver's Credit as part of the Pension Protection Act of 2006.[131] The Saver's Credit can be used in conjunction with other tax benefits for savings in 401(k)s and IRAs.[132]

The Saver's Credit is calculated as a percentage of one's eligible retirement contributions based on adjusted gross income.[133] The maximum credit is $1,000 for single filers and $2,000 for those married filing jointly.[134] The 2016 Saver's Credit limits are set out in Figure 24.[135]

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[128] Discussion in this section largely based on *IRC 457(b) Deferred Compensation Plans*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/retirement-plans/irc-457b-deferred-compensation-plans.
[129] *Retirement Topics – 457(b) Contribution Limits*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-457b-contribution-limits.
[130] *Improving the Saver's Credit*, J. Mark Iwry, Peter R. Orszag, and William G. Sale, The Brookings Institution, July 1, 2004, http://www.brookings.edu/research/papers/2004/07/saving-gale.
[131] *Interaction of Automatic IRAs and the Retirement Savings Contributions Credit (Saver's Credit)*, Judy Xanthopoulos, PhD, and Mary M. Schmitt, Esq., Optimal Benefit Strategies, LLC, January 31, 2008, http://quantria.com/assets/img/Automatic_IRAs_and_the_Savers_Credit.pdf.
[132] *Could the Saver's Credit Enhance State Coverage Initiatives*, Alicia H. Munnell and Anqi Chen, Center for Retirement Research at Boston College, April 2016, Number 16-7, accessed November 10, 2016, http://crr.bc.edu/wp-content/uploads/2016/04/IB_16-7.pdf.
[133] *Retirement Savings Contributions Credit (Saver's Credit)*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Savings-Contributions-Savers-Credit.
[134] *Retirement Savings Contributions Credit (Saver's Credit)*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Savings-Contributions-Savers-Credit.
[135] *Retirement Savings Contributions Credit (Saver's Credit)*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Savings-Contributions-Savers-Credit.

Figure 24 – 2016 Saver's Credit

2016 Saver's Credit			
Credit Rate	**Married Filing Jointly**	**Head of Household**	**All Other Filers***
50% of your contribution	AGI not more than $37,000	AGI not more than $27,750	AGI not more than $18,500
20% of your contribution	$37,001 - $40,000	$27,751 - $30,000	$18,501 - $20,000
10% of your contribution	$40,001 - $61,500	$30,001 - $46,125	$20,001 - $30,750
0% of your contribution	more than $61,500	more than $46,125	more than $30,750

Source: Internal Revenue Service, *Retirement Savings Contributions Credit (Saver's Credit)*.

Contributions eligible for the credit include the following: contributions to a traditional or Roth IRA, SIMPLE IRA, SARSEP, 401(k) plan, 403(b) plan, 501(c)(18) plan, or governmental 457(b) plan.[136] In addition, voluntary employee after-tax contributions to a qualified retirement or 403(b) plan are also eligible for the Saver's Credit.[137]

But the Saver's Credit is not being used to its maximum potential. In a 2013 survey of American workers with annual household incomes of less than $50,000, the Transamerica Center for Retirement Studies found that only 23 percent were aware of the Saver's Credit.[138] In addition, there are other factors that may prevent an eligible taxpayer from taking advantage of the credit. For example, low- and moderate-income taxpayers (i.e., those eligible for the credit) may not have enough disposable income to contribute to a qualifying retirement plan. Furthermore, the Saver's Credit is not available by filing the IRS Form 1040EZ, which is a common filing form for low- and moderate-income workers.[139] Additionally, since the Saver's Credit is applied after the non-refundable Child Tax Credit, many taxpayers cannot use the Saver's Credit.[140] In February 2016, Senate Bill 2492, Encouraging Americans to Save Act, was introduced in Congress to improve the Saver's Credit, including making the credit refundable, increasing the income threshold for eligibility for the credit, and allowing direct deposit of the credit into a retirement savings account. It has been referred to the Senate Committee on Finance.[141]

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[136] *Retirement Savings Contributions Credit (Saver's Credit)*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Savings-Contributions-Savers-Credit.
[137] *Retirement Savings Contributions Credit (Saver's Credit)*, Internal Revenue Service, accessed June 6, 2016, https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Savings-Contributions-Savers-Credit.
[138] *Many Low- to Moderate-Income Taxpayers Can Benefit From Retirement Savings Contributions Credit (Saver's Credit)*, Transamerica Center for Retirement Studies, February 6, 2014, http://www.transamericacenter.org/docs/default-source/resources/center-research/tcrs2014_pr_savers_credit.pdf.
[139] *Many Low- to Moderate-Income Taxpayers Can Benefit From Retirement Savings Contributions Credit (Saver's Credit)*, Transamerica Center for Retirement Studies, February 6, 2014, http://www.transamericacenter.org/docs/default-source/resources/center-research/tcrs2014_pr_savers_credit.pdf.
[140] *Could the Saver's Credit Enhance State Coverage Initiatives*, Alicia H. Munnell and Anqi Chen, Center for Retirement Research at Boston College, April 2016, Number 16-7, accessed November 10, 2016, http://crr.bc.edu/wp-content/uploads/2016/04/IB_16-7.pdf.
[141] S. 2492, 114th Congress (2015-2016), https://www.congress.gov/bill/114th-congress/senate-bill/2492.

FY 2017 Federal Budget Proposal

President Obama highlighted retirement savings by including the topic in his 2016 State of the Union Address, as well as including a number of related items in his proposed FY 2017 budget. The items proposed in the budget were as follows:[142]

- Helping workers who do not have access to an employer-sponsored retirement savings plan
    - Automatic enrollment of all employees in an IRA if an employer-sponsored retirement savings plan is not offered
        - This would not apply to an employer with 10 or fewer employees
        - Automatic enrollment could impact approximately 30 million Americans
        - Employees would have the option to opt out of the automatic enrollment
        - Employers would not be required to contribute to the IRA
    - Tax credits for certain employers that adopt an auto-IRA or more generous plan
        - Any employer with 100 or fewer employees would receive a tax credit of up to $4,500 in exchange for offering an auto-IRA
        - The "startup" credit would triple and be extended for an additional year to offset administrative expenses
        - Employers that already offer a retirement plan but add automatic enrollment would be eligible for a $1,500 tax credit
    - Expansion of retirement savings options for long-term, part-time workers
        - An employer would be required to offer access to its retirement plan to all employees who work at least 500 hours per year in three consecutive years
        - Employers would not be required to offer matching contributions
        - Employees would be eligible to opt out of the participation
    - Grants for state retirement savings initiatives
        - $6.5 million is set aside to help fund state-based 401(k)-style or auto-IRA pilot programs
    - Support for more flexible benefit models
        - Creation of the "open MEP" concept, which would allow multiple employers to offer benefits through the same administrative structure by removing the "common bond" requirement currently associated with MEPs
        - Safeguards are added to further protect workers that would participate in an open MEP
- Protecting workers' retirement security
    - Authority for the Pension Benefit Guaranty Corporation (PBGC) to adjust premiums so as to reduce unfunded liabilities in the single-employer and multiple-employer programs

It is unknown whether any of these initiatives will be included in a future budget under a new administration.

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[142] *Meeting our Greatest Challenges: Opportunity for All*, FY 2017 Budget Document, Office of Management and Budget, The Office of the President of the United States, https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/opportunity.pdf.

Initiatives In Other States

In the past few years, state legislatures have increasingly turned their attention to solving the perceived retirement savings deficit and the coverage gap. Since 2012, at least 30 states have considered a proposal to establish or study a state-sponsored initiative.[143] Among those states, several have legislatively established a program. As of November 2016, California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Oregon, and Washington had enacted some type of initiative to address the perceived retirement savings and coverage gap in those states. Other states' enabling legislation is included as Appendix G. An October 28, 2016 chart from Segal Consulting is included as Appendix H, which includes basic plan design information on the six states—California, Connecticut, Illinois, Massachusetts, Maryland, and Oregon—contemplating state-sponsored payroll deduction retirement savings programs for private employees. It shows multiple facets of plan design, including program type, covered employers, enrollment and investment structures, and current status of the program as of October 2016.

The Georgetown University Center for Retirement Initiatives (CRI) has been monitoring state-sponsored initiatives. Its comprehensive State Brief documents, which are regularly updated by CRI, are included as Appendix I. The State Briefs provide a comparison of all of the state-sponsored initiatives created thus far and the current status of the various initiatives. The first State Brief compares California and Illinois Secure Choice programs, Oregon and Maryland Savings Programs, and Connecticut Exchange program, all of which are mandatory for specified employers and which should not be subject to ERISA based on the DOL ruling. The second State Brief compares the Washington and New Jersey Marketplace options, and the Massachusetts option solely for non-profits, all of which are voluntary for the selected employers. Both CRI State Briefs look at ERISA applicability, requirements for additional market, feasibility, or legal analysis, administration, structure of accounts and the plan, if known, investments if specified in the enabling legislation, fees, and program funding.

Each of these three Appendices illustrate aspects of retirement savings programs that can be tailored to meet the needs of the Commonwealth. The next section in this report provides further detail on programs implemented in other states.

[143] *Look to the States for Innovation*, Georgetown Center for Retirement Security, accessed November 3, 2016, http://cri.georgetown.edu/states/.

Program Examples

As states begin to implement initiatives to address retirement savings and the coverage gap, three general approaches have been adopted thus far. At a high level, these approaches include:

Option 1: Non-ERISA State Plan – Auto-IRA (also known as "Secure Choice")

Most legislation on state-sponsored retirement plans for the private sector is being designed so that the plan is not subject to ERISA regulations. As noted above, ERISA provides important protections for plan participants and their beneficiaries. The law requires plans to provide participants with plan information, including essential facts about plan features and funding; sets minimum standards for participation and vesting; imposes fiduciary responsibilities that require plan sponsors and providers who have control over plan assets to act in the best interests of plan participants; and gives participants the right to sue for benefits and breaches of fiduciary duty.

Some legislators in other states have expressed concern that ERISA would require the state, the plan, or participating employers to take on too many responsibilities or be subjected to unwanted liability. Many employers that do not offer retirement plans also cite concerns about the number of retirement plan options, legal and administrative burdens, and potential risks.[144] States pursuing this approach are attempting to balance these concerns and also require similar protections to those offered under ERISA.

For a state plan to avoid falling under ERISA, the employer's role must be minimal. The federal DOL provides legal guidance to employers describing the specific arrangements needed to keep a plan from falling under ERISA as well as the tasks an employer can perform without converting the arrangement to an ERISA covered plan.

Such a plan would mandate that all employers meeting certain criteria either to offer a retirement plan for their workers or enroll the workers in the state's automatic enrollment payroll deduction IRA (auto IRA) plan. For example, the Secure Choice program soon to take effect in Illinois is a Roth IRA that will cover employers with 25 or more employees that do not have plans, and California is offering a traditional IRA in its Secure Choice plan. Oregon's DC plan, intended to be an IRA, will cover any employer, and Maryland will cover employers with 10 or more employees working at least 30 hours per week, giving them one or more IRAs to be determined by the Maryland Small Business Retirement Savings Board.[145]

In these state auto-IRA plans, employers must process the enrollment and payroll contributions of their workers but otherwise have minimal involvement. Employees automatically enrolled in the programs start with contributions at a specified amount of pay, though they can adjust their contributions or opt-out altogether.

[144] *Private Pensions: Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship*, United States Government Accountability Office, GAO-12-326, March 5, 2012, http://www.gao.gov/products/GAO-12-326.
[145] See Appendix I.

Investments generally depend on statutory construction.[146] In Oregon, the legislation does not include specifications for investments.[147] The California Secure Choice Retirement Investment Board may consider a range of asset categories, but legislation requires that equities cannot exceed 50 percent of the overall asset allocation of the fund.[148] The Illinois Secure Choice Savings Board is required by statute to establish investment options to include a default life-cycle target date fund and any one or more of a conservative principal protection fund, a growth fund, a secure return fund, and an annuity fund.[149] Legislation specifies that the Maryland Small Business Retirement Savings Board shall consider and implement a range of investment options, and must include a default selection. The Maryland board may not offer options that could result in liability to the state or the taxpayers. The Board is to consider options that will minimize the risk of investment losses at the time of a participant's retirement and that will minimize expenses, and may provide an option that provides an assured lifetime income.[150]

The Connecticut Retirement Security Exchange mandates employer participation if they have five or more employees and do not offer a plan, however, employers may choose to offer a plan available on the open market, rather than the Roth IRA offered by the Connecticut Retirement Security Authority Board, making the Connecticut plan similar to the Marketplace option described later in this report.[151]

<u>Option 2: State-sponsored ERISA Plan – Prototype Plan, Multiple Employer Plans (MEP)</u>

Recent guidance from the U.S. Department of Labor made clear that states can operate ERISA-governed plans that cover many non-government employers. These can be either prototype plans or MEPs. With a prototype plan, a state would offer a standard plan design for a 401(k) or other retirement plan to employers, which would choose among options, such as required employee contribution rates, according to their needs. MEPs provide a single plan that covers a group of unrelated employers. Prototype plans and MEPs can both achieve efficiencies and economies of scale that help reduce costs.

Each employer that adopts the prototype is sponsoring an ERISA plan. Individual employers would assume the same fiduciary obligations associated with sponsorship of any ERISA-covered plan, but a state or a designated third party would assume responsibility for most administrative and asset management functions.

MEPs also fall under ERISA. A state that sponsors a MEP would be the plan fiduciary in terms of operating the plan, communicating with employees, selecting service providers, paying benefits, and performing other plan services.

[146] See Appendix I.
[147] See Appendix I.
[148] See Appendix I.
[149] See Appendix I.
[150] See Appendix I.
[151] See Appendix I.

Massachusetts is implementing a prototype plan for small nonprofit organizations. Each participating employer maintains an ERISA-covered defined contribution plan that is made more affordable because the state treasurer administers contributions and investments.

Employer participation is optional under this model. In Massachusetts, employees may opt-out of the prototype plan.[152] To date, there do not appear to be any states offering a MEP.[153]

<u>Option 3: Encourage Voluntary Employer-based System – Marketplace</u>

States can also encourage – but not require – business owners to adopt existing private sector retirement plans. Many business owners and executives may not be familiar with available retirement programs, and plan providers say it is often difficult to reach small businesses with product offerings. To help, New Jersey and Washington State have enacted marketplace exchanges. A marketplace might be preferable in some states where policymakers have concerns about requiring participation by employers and employees.

States can create websites where financial service providers can market retirement plans. States can set criteria for providers that can present their plans in formats allowing easy comparison shopping. Employers could receive tax breaks or other incentives to adopt a plan and employees could receive similar incentives to participate.

<u>Comparisons of State Initiatives and Plan Design Considerations for Legislatures</u>

Each one of the foregoing approaches has unique characteristics, and initiatives vary from state to state within each category. Over time, more information and data becomes available with respect to each state initiative, as well as the three general approaches. The Pew Charitable Trusts issued a June 2016 report that reviewed the main approaches being employed by states and provided case examples of specific state programs. Pew's report on this topic can be found in its entirety in Appendix J.

In addition to a discussion of the three approaches, Pew's June 2016 report also points out plan design considerations that legislatures may wish to consider, which are summarized below and included in full in Appendix J.

<u>Program Choices Affecting Employers</u>

Much of the focus on retirement saving is on the employee. States that have enacted legislation are also considering the employer perspective. The Oregon Retirement Savings Task Force reports that while some small business owners who participated in focus groups during the feasibility study are in favor of a requirement to provide access to a plan for its employees,

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[152] See Appendix I.
[153] See Appendix I.

others are opposed to a requirement due to concerns about the administrative burden.[154] The Pew Trusts intends to publish an issue brief in January 2017 surveying national employer reactions to various proposals, which will provide additional insight into employer preferences.[155] Depending on a program's impact on coverage, employer responsibilities, and the broader private retirement plan market, employers will be affected in a variety of ways.

Program Structure – Voluntary vs. Mandatory

Some states have considered legislation that would create state-sponsored retirement programs allowing employers to choose whether or not to participate while others have made participation mandatory. States like Illinois and Connecticut have introduced auto-IRA plans and penalties for employers who do not participate. Washington State's marketplace is a purely voluntary system. The voluntary approach may appeal to some who want to minimize employer burdens but the question for policy makers is how large an impact a voluntary approach is likely to have on workplace access.

Employer Size - Employee Threshold

Another fundamental question facing policymakers is which employers will be subject to a program mandate. Some proposals like Washington State and New Jersey's marketplaces exclude larger employers while Illinois Secure Choice Program exempts smaller ones, for example. The former threshold is intended to keep larger employers that could likely manage the setup and administration of a plan on their own out of the state program. The latter threshold may reflect the concern that the costs of participation in a retirement program could harm the profitability or viability of the smallest firms.

The size of a threshold can have a significant impact on the overall number of workers covered as most uncovered employees work for smaller businesses. For example, if the Illinois program's employee threshold were set at 5 rather than 25 it would potentially cover up to 700,000 more workers and have a much larger impact on coverage. With an employee threshold of 25, the Illinois Treasurer's Secure Choice website estimates that 1.2 million workers will be covered.[156]

Employer Responsibilities – Communication and Enrollment

Under many of these proposals, employers are responsible for enrolling their workers. The length and frequency of enrollment periods are significant questions for employers, who must provide communication materials and deal with changes in employee decisions. Additionally, employers are often the point of contact for benefits-related questions, so they can expect employees to ask additional questions about the program, such as contributions, investments, and distributions. Balancing the efficiency of a workplace-based program with the potential burdens placed on the employer are critical considerations in designing a successful program.

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[154] See *Report and Recommendations of the Oregon Retirement Savings Task Force, September 15, 2014 (*p. 15), Oregon Retirement Savings Task Force, accessed November 4, 2016, http://library.state.or.us/repository/2014/201412091314362/.

[155] Retirement Savings, The Pew Trusts, issue brief to be published January 2017, www.pewtrusts.org/small-businesses-on-retirement-savings-plans.

[156] Secure Choice, Illinois State Treasurer website, accessed September 29, 2016, http://illinoistreasurer.gov/Individuals/Secure_Choice.

Employer Liability

In general, proposals to establish state-sponsored retirement programs that require employer participation eliminate employer liability for an employee's decision to participate, as well as for investment performance, plan design, and retirement income paid to participants.

Program Choices Affecting Employees

Employees will be affected in a variety of ways depending on who is eligible to participate, how they are enrolled, initial contribution levels, how contributions will be invested and protected, and how accessible savings will be.

Types of Employees Covered

Any program should specify which employees will be covered. How an employee is defined has effects on access and participation. Do all those subject to income tax qualify? Should an employee's age–18, 21, 60, 65–be considered, or a status as full- or part-time or full- or part-year? For example, the Maryland Small Business Retirement Savings Program reportedly will cover employees working at least 30 hours per week.[157]

Enrollment Structure

Research in behavioral economics, and experience with traditional retirement plans, has consistently shown that even minor tasks associated with opting in to a plan can keep workers from enrolling.[158] Automatic enrollment—with the ability to opt out—dramatically increases the number of employees who participate.[159] However, the effects of auto-enrollment may be somewhat weaker for lower-income workers and workers in small firms.[160]

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[157] *Maryland launches private-sector retirement program*, Hazel Bradford, Pensions & Investments, May 9, 2016, accessed September 29, 2016, http://www.pionline.com/article/20160509/ONLINE/160509891/maryland-launches-private-sector-retirement-program.

[158] *Nudge: Improving Decisions About Health, Wealth, and Happiness,* Richard Thaler and Cass Sunstein, 2008, New Haven, CT: Yale University Press.

[159] "Behavioral Economics and the Retirement Savings Crisis," Shlomo Benartzi and Richard H. Thaler, 2013, *Science* 339, p. 1152-53, http://faculty.chicagobooth.edu/Richard.Thaler/research/pdf/Behavioral%20Economics%20and%20the%20Retirement%20Savings%20Crisis.pdf; "Annuitization Puzzles," Shlomo Benartzi, Alessandro Previtero, and Richard H. Thaler, 2011, *Journal of Economic Perspectives* 25, no. 4, p. 143–64, http://faculty.chicagobooth.edu/Richard.Thaler/research/pdf/Annuitization%20Puzzles.pdf, jep.25.4.143; "Heuristics and Biases in Retirement Savings Behavior," Shlomo Benartzi and Richard H. Thaler, 2007, *Journal of Economic Perspectives* 21, no. 3, p. 81-104, http://www.jstor.org/stable/30033736?Search=yes&resultItemClick=true&searchText=Heuristics&searchText=and&searchText=Biases&searchText=in&searchText=Retirement&searchText=Savings&searchText=Behavior&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DHeuristics%2Band%2BBiases%2Bin%2BRetirement%2BSavings%2BBehavior&seq=1#page_scan_tab_contents; *Automatic Annuitization: New Behavioral Strategies for Expanding Lifetime Income in 401(k)s,* J. Mark Iwry and John A. Turner, Retirement Security Project no. 2009-2, July 2009, http://www.brookings.edu/~/media/research/files/papers/2010/1/07-annuitization-iwry/07_annuitization_iwry.pdf.

[160] *How America Saves: Vanguard 2015 defined contribution plan data 15th Anniversary Edition* (Figure 28), Vanguard Group Inc., https://pressroom.vanguard.com/nonindexed/HAS2016_Final.pdf.

Contributions

Most statewide retirement savings legislation requires employers to withhold employee contributions from pay at a default rate if an employee does not set his or her own rate or opt out altogether. Legislation can also determine a minimum and a maximum rate of contribution. As contributions, along with returns and potential employer matches in ERISA covered plans, determine overall retirement savings, setting an appropriate default rate is an essential element toward achieving adequate retirement savings.

Investing Contributions

States must also consider how to structure the investment of plan contributions, taking into account efficiency, costs and program goals. Many state plans envision pooling contributions under a single entity, such as an investment board, which would invest the savings professionally and manage them more efficiently and potentially at a lower cost. Others anticipate a participant-directed model where participants are responsible for managing their investments. A default investment option must still be selected for those who do not select an option. While this second model increases participant freedom it comes with the additional costs associated with enrollment meetings, participant education, and possibly individual advice.

Tax and Financial Incentives

Most state proposals seek to ensure that savings will be tax deferred under the IRC. However, participants may likely be lower-income workers who may not benefit as much from deferring taxes on their contributions. In addition, many programs do not explicitly provide financial incentives to participate, such as employer matching contributions or refundable tax credits. Some states are offering or proposing Roth IRAs to allow workers to contribute after-tax money. That could help those who might have a higher tax rate in the future since qualified distributions from Roth IRAs (including earnings) are not taxed if the distribution meets IRS requirements. The ability to withdraw contributions (not including earnings) after as little as five years with no taxation or penalties could appeal to lower-income workers concerned about having their money tied up for the long term. One potential disadvantage is that participants cannot roll over Roth IRA accounts into employer-provided retirement plans if they change jobs.

Withdrawals

Various IRS rules govern withdrawals from retirement plans. Typically, when participants leave their employer or retire, they withdraw plan funds in a lump sum to use as they see fit, roll their account to a new plan or IRA, or leave their account where it is. How they handle these changes before retirement may have federal tax and even penalty consequences.

Portability of Benefits

Portability usually refers to the ability of workers to continue to save in a single account even if they change jobs. In state-level retirement savings programs, workers could presumably maintain their accounts with the state if they changed jobs, but it is not clear if portability would mean that savings accounts could be transferred to a different state, to an IRA, or to an ERISA plan sponsored by a new employer. For tax reasons participants cannot roll over their Roth IRA accounts into an employer-provided retirement plan if they change jobs.

State Concerns and Overall Management

Program Administration and Governance

As noted, many statewide retirement savings proposals are designed so that the plans will not be regulated by ERISA. Despite this plan design approach, important governance issues remain. To illustrate, ERISA rules for administering private sector plans include requirements for ensuring the integrity of funds and investments, meeting reporting and disclosure responsibilities, and ensuring transparency and accountability. Whether through ERISA or outside of it, these requirements should be addressed.[161]

Regardless of whether they are covered by ERISA, state proposals have many governance provisions in common. Most would appoint a state officer or agency to run the program. For example, the Massachusetts CORE program is run by the state treasurer, and a "not-for-profit defined contribution committee" in the treasurer's office helps develop general policy and provides technical advice.[162]

A state may also create a board with appointed members representing different branches of government or sectors of society. Under California law, the Secure Choice board is part of the state government. It has administrative and managerial duties and acts as trustee for the state's plan.[163] The Illinois board is a state agency made up of legislative and executive appointees who will oversee the program.[164]

To date, a public pension plan has not been identified as an administrator of any of the state-based initiatives for private-sector workers, possibly due to the unique governance framework and limitations placed on public pension plans. For example, as noted previously, public pension plans are generally governed by the IRC's exclusive benefit rule.

Multi-agency collaboration between stakeholders may be appropriate to ensure resources and information already collected by state agencies is used efficiently. Some working group members have noted corollaries between an IRC § 529 plan and these types of retirement programs. However, additional exploration may be required to determine if or how these types of plans could be placed under an agency responsible for a 529 plan. In addition, Virginia is somewhat unusual in that its 529 plan is an independent agency of the Commonwealth, whereas in other states a 529 plan generally falls under the authority of the state treasurer.

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161 *How States Are Working to Address the Retirement Savings Challenge: An analysis of state-sponsored initiatives to help private sector workers save*, The Pew Charitable Trusts, June 2016, http://www.pewtrusts.org/~/media/assets/2016/06/howstatesareworkingtoaddresstheretirementsavingschallenge.pdf#page=24.

162 Massachusetts General Laws, Chapter 29, Section 64E, https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter60.

163 California Government Code, Sections 10002 (d), 100004, and 100010 (a), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

164 Illinois Public Act 098-1150, Section 16, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

Paying for the Program

State proposals typically require state-affiliated retirement savings programs to be cost-effective and sustainable. In some cases, states provide money for feasibility studies and startup costs, but virtually all programs are meant to be self-sustaining.

For example, under Illinois law, the state can pay administrative costs associated with creation and management of the program until it becomes self-sufficient. The law calls for the program to repay the state for startup costs. The state also requires that maximum annual administrative expenses not exceed 0.75 percent of the total trust balance.[165] Administrative fees pay board expenses and are used to repay the state for any startup costs. California statute provides that administrative costs under the plan should be low, that the plan should be self-sustaining, and that administrative costs may not exceed 1 percent of the amount in the participant's investment accounts.[166] The Connecticut law provides that administrative costs under their plans should be low, that the plan should be self-sustaining, and requires that administrative costs be limited to an annually predetermined percentage of total plan balances, although the law does not state what that percentage should be.[167]

States that are studying options to encourage private sector retirement savings are looking at the costs of various plan designs. The Minnesota law, for example, says its report should include the projected expenses of different plan designs and the fees that would be needed to cover these costs as a percentage of average daily assets.[168] The Vermont law provides that if its study committee finds that a public plan is necessary, feasible, and effective, the committee should study how to build enrollment to a level that will allow employee costs to be lowered.[169]

State Liability

Most of the legislation enacted makes clear that states cannot be held liable for investment losses. The Oregon law provides that the state task force cannot recommend a plan or use of an investment product that could create any state liability or obligation for payment.[170] The Connecticut law says the state has no liability for any obligation incurred by the plan.[171] California's law also prohibits state liability and takes an additional step to ensure that the state will not be required to support the program financially by requiring the state to carry insurance or

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165 Illinois Public Act 098-1150, Section 30 (m), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

166 California Government Code, Sections 100004 (a) and (d), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

167 Connecticut Public Act No. 14-217, Section 185 (a) (5) and (7), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

168 Minnesota Session Laws, Chapter 239, H.F. 2536, 4th engrossment, 88th Legislature (2013-2014), Section 10 (b) (6), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0.

169 Vermont Act No. 179, Section C. 108 (c) (1) (B) (iii) (2014), http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT179.PDF.

170 Oregon Laws 2013, Chapter 714, Section 2 (c), https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0714.pdf.

171 Connecticut Public Act No. 14-217, Section 185 (a) (23), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

some other funding mechanism to protect the value of individual accounts.[172] In Minnesota, the expected retirement savings plan report must examine options to protect the state from liability and to manage risk to the principal.[173]

Third Party Plan Administrators

The Oregon Retirement Savings Plan (ORSP) was the first to issue a Request for Proposals (RFP) on September 21, 2016 for a service provider for plan operation, participant and employer services, and account recordkeeping. The firm selected may manage plan assets, depending on the structure.[174] Some providers have indicated that they do not intend to enter this space. Responses were due in late October, and, according to the Board report on RFP #170-1119-16, ORSP received responses from Ascensus, Bank of New York Mellon, and TIAA.[175] At its December 2016 Board meeting, ORSP approved an Intent to Award to Ascensus for Plan Administration and Management Services.

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172 California Government Code, Sections 100036 and 100013, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=. The board can also purchase insurance to protect its members from personal liability resulting from a member's action or inaction as a member of the board. California Government Code, Sections 100010b (a) b (10), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

173 Minnesota Session Laws, Chapter 239, H.F., 2536 4th engrossment, 88th Legislature (2013-2014), Article 2, Sections 10 (a), and (b) (4), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0.

174 *Oregon Treasury unveils retirement plan*, Kathleen McLaughlin, November 4, 2016, Bend Bulletin, http://www.bendbulletin.com/business/4785952-153/oregon-treasury-unveils-retirement-plan.

175 "Oregon Retirement Savings Plan- Board Recommendation- 2016.11.30" Oregon Retirement Savings Board, December 6, 2016 Board Meeting, available at http://www.oregon.gov/treasury/ORSP/pages/default.aspx.

Additional Considerations and Potential Next Steps

Additional Considerations.

There are additional considerations that may be useful if the Virginia General Assembly chooses to move forward with developing a retirement savings program for the Commonwealth's citizens.

VRS is Governed by the Exclusive Benefit Rule

VRS is governed, in part, by a Virginia constitutional provision and the IRS exclusive benefit rule, both of which require the VRS Trust Fund to be administered solely in the best interest of VRS members, retirees, and beneficiaries. As this program addresses a population that is not made up of VRS members and beneficiaries, a dedicated funding source other than the VRS Trust Fund would be required. For example, VRS would require a general fund appropriation or other source of funding in order to administer such a plan. Other states have created a new agency or board, or used an existing state agency, to administer these types of programs. Based on current information, no state governmental retirement plan is administering a private retirement program.

Keep Plan Design Simple

Research in social psychology and behavioral finance, specifically related to investment choices, shows that too many choices negatively impact participation rates. In evaluating a cross section of data, researchers discovered that for every 10 additional investment options, participation dropped 2 percent, with participation highest with fewer than 10 options. Industry experts, along with academic literature, indicate that people are much less likely to participate in all of the features and benefits of a plan when they do not understand how the plan works and there are too many choices. Other research has shown that more choices generally correlate to lower contribution levels. Furthermore, it is much more difficult for a plan sponsor to educate the eligible population when the plan design contains complex features.

Therefore, any potential initiative would likely be more successful if it is simple and understandable. In turn, this should allow the eligible population to better comprehend the benefits of participation and increase the likelihood of widespread utilization. Some work group members noted that by limiting choices, employees may be deprived of potentially better aligned retirement options for their individual situation and that there are tradeoffs in limiting investment options. Fewer options can also possibly reduce administrative costs as education efforts will not be as complex.

Conduct a Comprehensive Feasibility Analysis

If the Commonwealth opts to pursue the possibility of creating its own plan for private-sector workers rather than promoting existing options, three questions should be considered:

- If you create a program, will there be adequate participation?
- What will the costs be?
- If there is not adequate participation, what will the consequences be?

Establishing such a plan involves fixed costs, and if the participation and contribution rates are low, covering the fixed costs will be a challenge.

The financial viability of state-run retirement programs depends on several factors, such as participation rates, contribution rates, withdrawal and turnover activity, and variable administrative costs.[176] The Commonwealth may wish to consider conducting a comprehensive financial feasibility study that closely examines these factors and makes realistic assumptions in projecting costs. Other states have conducted similar feasibility studies prior to implementing plans.

Participation Rates

Plan design and workforce demographics are significant factors that affect participation and opt-out rates.[177] Workers who are not currently offered a retirement plan at their current employer tend to be younger, have lower incomes, and be more likely to work part-time than workers who are offered a plan.[178] All three characteristics of these workers may reduce the likelihood of their participating in the savings plan.

Low participation rates (or high opt-out rates in a program using automatic enrollment) could significantly increase the cost of running a retirement program for private-sector workers in Virginia. Assumptions about potential opt-out rates for private-sector workers participating in such programs may be overly optimistic, in part because they typically are based on findings derived from private-sector experience. Without the benefit of experience data specific to public plans for private workers, it is difficult to determine whether automatic enrollment in a state-run retirement program for private-sector workers will elicit the participation rates produced by automatic enrollment in voluntary private-sector retirement plans.[179]

Contribution Rates.

Income levels are an important factor in understanding retirement savings behavior. The data suggest that nationwide about three-quarters of private-sector workers without retirement plan coverage may be focused on other savings goals or experiencing other financial stresses.[180] For many U.S. retirees, Social Security plays an important role in replacing earnings, particularly for workers with lower earnings, who get high replacement rates from Social Security.[181]

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[176] See Letter from Investment Company Institute (ICI) to the Honorable John Chiang, California State Treasurer, March 24, 2016 and letter from ICI to the Honorable Lois Court, Colorado House Finance Committee Chair, April 19, 2016.
[177] ICI March 24 Letter, p. 4–15.
[178] See Figure 2 in ICI March 24 Letter, p. 10.
[179] ICI March 24 Letter, p. 4–15.
[180] ICI March 24 Letter, p. 25-26.
[181] The Congressional Budget Office reports estimated replacement rates from scheduled Social Security payments, and Social Security replaces a higher percentage of pre-retirement earnings for workers in lower-income households than it does for workers in higher-income households. See *2015 Long-Term Projections for Social Security: Additional Information*, Congressional Budget Office, December 2015, www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51047-SSUpdate.pdf.

Given that the earnings for workers not currently covered by a retirement plan tend to be low, the amounts that Virginia workers are likely to contribute will also be modest. To illustrate, participating workers with low levels of earnings would likely make small contributions and have small account balances because of the other demands on their financial resources.

Contribution rates will have a significant impact on the ultimate cost of administering a retirement program for private-sector workers. Low levels of contributions will lead to accounts with small balances. A plan with small average account balances will be more costly to operate than a plan with the same overall level of assets but larger average account balances.

Withdrawal and Turnover Rates

There are several variables that would affect withdrawal activity and account turnover: (1) access to account balances for withdrawals; (2) behavior at job change by private-sector workers participating in such a program; (3) IRA rules that permit individuals to change financial services providers at any time; and (4) realization by participants that a private-sector IRA may offer a more attractive investment opportunity. All of these factors will affect the size of the average account in the program.

Administrative Costs

Other costs to consider include enforcement costs, additional administrative costs related to invalid Social Security numbers, costs relating to the contribution patterns of part-year and seasonal workers, and the full costs of developing and delivering participant education materials, communication channels, and necessary reporting systems.

Include All Stakeholders

As with any project, the success of an initiative in this space may be more likely if all affected stakeholders are included in the conversation. This includes not only public-sector entities, but also private-sector organizations, which can provide additional perspective, expertise, and resources. Moreover, community organizations and other entities that represent underserved populations may be helpful in understanding how best to reach people who are most in need of saving for retirement. The HB 1998 work group includes a number of such stakeholders; however, additional outreach may be beneficial.

Financial Education Improves Financial Literacy

Policymakers and researchers may wish to consider deploying financial education to encourage more workers to start saving for retirement. While evidence on the effectiveness of general financial education in directly increasing household savings may be mixed, some research shows that providing information through the workplace may prove helpful.[182] Additionally, some

[182] "Raising Household Saving: Does Financial Education Work?," William G. Gale, Benjamin H. Harris, and Ruth Levine, 2012, *Social Security Bulletin* 72 no. 2, p. 39–48, http://www.ssa.gov/policy/docs/ssb/v72n2/v72n2p39.pdf;

experts contend that employees might increase their savings if the timing of financial education efforts corresponds with specific decision-making events, such as initial plan enrollment.[183] Other research has found that financial education efforts do not necessarily lead to increased household savings.[184] Although financial education appears to be helpful, alone it may not be sufficient to solve the problem of failing to save for retirement. Providing workplace financial literacy and education should be considered as important components of more holistic efforts to encourage retirement savings.

Research finds that financial education may improve outcomes. For example, one study explored the role of financial education on retirement savings and found that individuals alter their retirement goals and their savings behavior in response to improved financial literacy.[185] Specifically, the survey results suggest that individuals are likely to reevaluate their lifetime plans for savings versus consumption and work versus retirement after completing a financial education program. Another study linked financial education programs to improved saving and financial decision-making.[186] And FINRA survey research finds that 60 percent of individuals with taxable accounts and 40 percent of individuals with only retirement accounts had "high financial literacy," compared to 21 percent of individuals with no accounts.[187]

As households age, the focus of their savings goals changes.[188] In preparing for retirement, workers typically need to decide whether to participate in a retirement plan, how much to contribute, and how to invest the contributions. Retirement plan sponsors, often with the help of financial services firms, provide a great deal of educational materials and support to help

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"Workplace Financial Education Facilitates Improvement in Personal Financial Behaviors," Aimee D. Prawitz and Judith Cohart, 2014, *Journal of Financial Counseling and Planning*, 25, Issue 1, p. 5–26, http://afcpe.org/assets/pdf/volume_25_1/04088_pg5-26.pdf.

[183] For perspective on the mixed evidence for financial education and the case for "just-in time" teaching, see , "Financial Literacy, Financial Education, and Downstream Financial Behaviors," Daniel Fernandes, John G. Lynch Jr., and Richard G. Netemeyer, 2013, *Management Science*, http://dx.doi.org/10.1287/mnsc.2013.1849.

[184] "The Economic Importance of Financial Literacy: Theory and Evidence*,"* Annamaria Lusardi and Olivia S. Mitchell, 2014, *Journal of Economic Literature* 52, no. 1, p. 5–44, http://www.umass.edu/preferen/You%20Must%20Read%20This/Financial%20Literacy%20JEP%202014.pdf.

[185] See "Financial Education and Retirement Savings," Robert L. Clark, Madeleine B. d'Ambrosio, Ann A. McDermed, and Kshama Sawant, March 27-28, 2003, presented at Sustainable Community Development: What Works, What Doesn't, and Why Conference sponsored by the Federal Reserve System, Washington, DC, http://www.federalreserve.gov/communityaffairs/national/CA_Conf_SusCommDev/pdf/clarkrobert.pdf.

[186] See "Household Saving Behavior: The Role of Financial Literacy, Information, and Financial Education Programs," Annamaria Lusardi, February 2008, *NBER Working Paper* No. 13824, http://www.nber.org/papers/w13824.

[187] See "2015 ICI Retirement Summit—Session I What Do Retirement Savers Need &
What Can Providers Give Them? The Roles of Education, Advertising & Advice," Gerri Walsh, April 8, 2015, presented at the 2015 ICI Retirement Summit: Improving Retirement Outcomes Through Education and Innovation, Washington, DC, https://www.ici.org/events/materials/conf_15_ret_summit_materials.

[188] Analysis of 2013 Survey of Consumer Finances data finds that 32 percent of households age 21 to 29 indicated that their primary savings goal was home purchase, for the family, or education, while 13 percent of households this young indicated retirement was their primary savings goal. See *2016 Investment Company Fact Book: A Review of Trends and Activities in the U.S. Investment Company Industry, 56th Edition* (Figure 7.2), 2016, www.icifactbook.org.

retirement plan participants navigate these decisions.[189] Individuals wishing to open IRAs can find information on government websites and financial services firms' websites to inform them of the choices available (traditional IRA or Roth IRA) and the array of investments.

Existing financial literacy resources can be used by the Commonwealth to educate citizens on retirement, as well as other money matters. The Consumer Financial Protection Bureau (CFPB) provides information on financial literacy for adults and children on its website at www.consumerfinance.gov. Most of the resources appear to be intended for use by organizations that provide financial literacy education to adults and children, rather than the general public. The Adult financial education section is directed specifically at adult financial educators, and the Youth financial education section is directed at teachers, administrators, and leaders who help students build financial knowledge and skills. Resources for libraries and parents provide more direct education, but consumers may bypass these areas. One of the last sections of the Educational Resources tab of the CFPB website is Information for Economically Vulnerable Consumers. It is directed at organizations that work with low income consumers.

MyMoney.gov aims directly at consumers and may provide useful basic resources if the Commonwealth wishes to link to existing financial literacy materials. The My Money Five section discusses five building blocks or principles for managing and growing money: earn, save and invest (e.g., for retirement), protect, spend, and borrow. Each principle is covered in a short web page with a link to additional resources in each topic. Many of these resources, as well as other websites, are written or managed by private or non-profit organizations whose goal is to promote financial literacy and education for adults and children. Additional sites geared to individuals include Practical Money Skills for Life, at www.practicalmoneyskills.com, and What is Financial Literacy at www.pbs.org/your-life-your-money/. VRS also offers a financial literacy series, called Money Matters, on its public web site that has six free courses (banking, credit, taxes, investments, financial planning, and home finance) available to the public with no registration required.

Potential Next Steps.

Based on the information gathered by the working group and incorporated into this report, the General Assembly may wish to consider the following items as potential next steps in the process of addressing private-sector retirement savings:

- **Determine whether there is a desire to move forward with a new initiative** – The General Assembly may wish to first review its options to address retirement savings that do not involve the creation of a new program. Such possible options include, but are not limited to, improving financial literacy and awareness of existing retirement savings resources.

[189] For example, Plan Sponsor Council of America reports that plan sponsors provide educational materials through many modes: more than two-thirds of 401(k) plans use emails to communicate educational materials to plan participants; 57 percent use Intranet/Internet sites; 53 percent have in-person seminars and workshops; 45 percent use individually targeted communications (e.g., you've turned 50; you can increase your contribution, or you're not at the employer match; you can increase your contribution to get the entire match); 40 percent use newsletters; and 38 percent have webinars; among several other types of educational materials. See *58th Annual Survey of Profit Sharing and 401(k) Plans: Reflecting 2014 Plan Experience*, Plan Sponsor Council of America, 2015, Chicago.

- **Assuming a desire to create a new program, determine the type of initiative** – Select an initiative from among the models already underway in other states, or identify a new model. In determining which model best addresses Virginia's needs, the General Assembly may also wish to consider identifying more detailed parameters:
    - Voluntary versus mandatory participation
    - Implementation timeline
    - Staffing source – whether a new entity will be created or an existing one augmented to administer the initiative
- **Conduct a comprehensive feasibility study.** The financial viability of state-run retirement programs depends on several factors, such as participation rates, contribution rates, withdrawal and turnover activity, and variable administrative costs. The Commonwealth should conduct a comprehensive financial feasibility study that closely examines these factors and makes realistic assumptions in projecting costs. Other states have conducted similar feasibility studies prior to implementing plans.
- **Determine a funding source** – As mentioned in the additional considerations above, a funding source other than the VRS Trust Fund must be must be identified. Whether the Commonwealth arranges a general fund appropriation or identifies another source of funding, one of the next steps will be to locate sustainable financial support for any initiative that the Commonwealth wishes to implement.
- **Confirm the applicability of various laws** – Once the Commonwealth identifies which model it wishes to implement, legal counsel will be needed to conduct a review of the proposed approach and provide confirmation of the application of ERISA and other various provisions. Furthermore, the Commonwealth may wish to have legal counsel provide advice regarding the potential liability exposure of the Commonwealth.

Summary of Working Group Observations

The following items summarize the observations made by the HB 1998 working group:

1. **Americans rely on a variety of resources in retirement.** These resources include, but are not limited to, social security, employer-sponsored retirement plans, and personal savings, among others.
2. **The average American is not financially prepared for retirement.** The Federal Reserve estimates that as many as 31 percent of Americans may not have any funds saved for retirement. Other data suggests that, in 2013, the median U.S. household had approximately $5,000 held in a retirement account. Meanwhile, the average U.S. household still only held $95,776 in a retirement account.
3. **Many Americans do not have access to an employer-sponsored retirement plan.** Estimates vary, but all are in agreement that tens of millions of American workers lack access to a retirement plan through their employer. Notable differences exist in these estimates when isolating various factors such as race, gender, age, and income. In the Commonwealth, the Pew Charitable Trusts found that 55 percent of working Virginians have access to an employer-sponsored retirement plan, while only 44 percent participated in such a plan. However, these figures tend to increase when isolating for full-time working Virginians.
4. **Retirement savings may be materially affected by wage earnings.** The majority of Virginia counties and independent cities reported first-quarter 2016 wage earnings below that of the national weighted average. Since high-income earners are more likely to save than low-income earners, when developing a program to improve retirement savings the Commonwealth may wish to consider the impact of wage earnings across the state.
5. **In order to change retirement insecurity, stakeholders may wish to consider meeting potential savers where they are by using the tools learned through behavioral economics.** Research indicates that individuals are 15 times more likely to save for retirement merely by having access to payroll deduction plans;[190] this is amplified further by the use of automatic enrollment. The Commonwealth may wish to consider ways to address the issue of the estimated 1.3 million Virginians without access to payroll deduction plans, and the need for access to automatic enrollment and escalation, easy to understand plans and choices, and the ability to convert funds into lifetime income streams.
6. **The legal and regulatory landscape is better defined than in years past, but should still be a consideration going forward.** The U.S. DOL issued final regulations in 2016 that provide states with guidance concerning the applicability of ERISA provisions to the various state-based initiatives. Although the guidance makes clear certain conditions that must exist to avoid ERISA preemption, the Commonwealth may wish to seek further legal advice before finalizing a statewide initiative.
7. **Many retirement savings vehicles already exist.** At the federal level, tax-incentivized vehicles, such as a 401(k), IRA, and *my*RA accounts, already exist. An educational campaign or program to support and promote participation in workplace retirement plans and IRAs may draw attention to the importance of retirement saving and the tax benefits of the variety of retirement savings vehicles available.

[190] *Survey of Income and Program Participation*, AARP Public Policy Institute, comp. Rep. N.p., Employee Benefit Research Institute, 2004.

8. **Promote the Saver's Credit, which may currently be underutilized.** This federal tax credit encourages low-income tax filers to save for retirement by offsetting a portion of money put away in an eligible retirement savings vehicle. Although the tax credit has existed for more than a decade, there remains an opportunity to increase its usage rate among Virginians. A 2013 survey suggested that only 23 percent of Americans were aware of the Saver's Credit. Although a federal program, a targeted communication campaign related to promoting the Saver's Credit could achieve greater knowledge of and usage by eligible taxpayers.
9. **Other states have adopted various approaches that the Commonwealth may wish to explore further.** Whether the General Assembly wishes to move forward with an auto-IRA (i.e., secure choice) plan, state-sponsored ERISA plan, a marketplace plan, or some other approach, there are numerous examples already in existence upon which a Virginia initiative could be modeled. Flexibility exists within each type of approach to create a plan that best fits the needs of the Commonwealth.
    a. <u>Program decision points and considerations that may affect employers:</u>
        i. Program structure – voluntary versus mandatory;
        ii. Employer size thresholds;
        iii. Employer responsibilities – communication and enrollment; and
        iv. Employer liability.
    b. <u>Program decision points and considerations that may affect employees:</u>
        i. Types of employees covered;
        ii. Enrollment structure;
        iii. Contribution amounts;
        iv. Investment options;
        v. Tax and financial incentives;
        vi. Withdrawals; and
        vii. Portability of benefits.
    c. <u>Program decision points and considerations that may affect the Commonwealth:</u>
        i. Administration and governance;
        ii. Funding the program;
        iii. State liability; and
        iv. Third-party plan administrators.
10. **A public pension plan does not appear to administer any of the initiatives in other states.** This is possibly due to the unique governance framework and limitations placed on public pension plans.
11. **Due to the IRS Exclusive Benefit Rule and Constitution of Virginia, any plan created for private-sector workers would have to be funded separately from VRS.** The VRS Trust Fund must be used for the exclusive benefit of VRS members and beneficiaries. As private-sector workers are generally not VRS members and beneficiaries, the VRS Trust Fund cannot be used as a funding source.
12. **Plan simplicity encourages participation.** Complexity in any program can hinder understanding and stifle participation. Any initiative by the Commonwealth may wish to consider a simple plan design so as to facilitate understanding among working Virginians and encourage participation.

13. **Participation rates, contribution levels, turnover rates, and program administration can impact the overall costs of any initiative.** All of these factors should be considered if the Commonwealth chooses to design a program.
14. **As program designs are explored further, the Commonwealth may wish to include a variety of stakeholders.** The states that have enacted legislation have or will complete feasibility studies, as well as conduct focus groups with various stakeholder groups. Including state agencies with exposure to and experience with similar initiatives and program elements may help eliminate unnecessary duplication of effort and expenditure of resources.
15. **The Commonwealth may wish to promote financial literacy in addition to considering the creation of a state-sponsored initiative.** Financial literacy is a growing trend in the financial services industry. Not only does financial literacy and education provide individuals with a better understanding of their own finances, but it also tends to result in individuals gaining a greater appreciation for saving over the long term. As a result, those who are more financially literate are more likely to save for retirement than those who are less financially literate. However, financial literacy is only part of the solution.[191]
16. **Potential next steps for the Commonwealth:**
    a. Determine whether there is a desire to move forward with a new initiative;
    b. Assuming a desire to create a new program, determine the type of initiative;
    c. Conduct a comprehensive feasibility study;
    d. Determine a funding source; and
    e. Confirm the applicability of various laws.

[191] "The Continuing Retirement Savings Crisis," Nari Rhee, and Llana Boivie, National Institute On Retirement Security, March 2015, *The Continuing Retirement Savings Crisis* (2015), p. 4, accessed July 2016, http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.

Appendices

Appendix A – Other Resources

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Financial Literacy Resources:

WalletHub and WalletLiteracy, at www.WalletHub.com.

Consumer Financial Protection Bureau (CFPB), at www.consumerfinance.gov.

www.MyMoney.gov.

Practical Money Skills for Life, at www.practicalmoneyskills.com.

What is Financial Literacy, at www.pbs.org/your-life-your-money/.

VRS Financial Literacy resources, at http://www.varetire.org/members/education/index.asp

Appendix B – Data from the Bureau of Labor Statistics on Virginia Weekly Wages, First Quarter 2016

Table B.1
Covered employment and wages in the United States and all counties in Virginia, 1st quarter 2016

Area	Employment March 2016	Average weekly wage (1)		Area	Employment March 2016	Average weekly wage (1)
United States (2)	140,070,814	$1,043				
Virginia	3,748,064	1057		Page	5,138	592
Accomack	12,628	666		Patrick	5,448	491
Albemarle	52,892	991		Pittsylvania	12,336	594
Alleghany	3,815	640		Powhatan	6,775	712
Amelia	2,410	642		Prince Edward	8,861	639
Amherst	8,490	649		Prince George	14,997	954
Appomattox	3,143	526		Prince William	123,719	838
Arlington	170,851	1,734		Pulaski	13,740	664
Augusta	26,875	753		Rappahannock	1,480	1,014
Bath	2,208	724		Richmond County	2,849	682
Bedford	18,592	682		Roanoke County	37,429	744
Bland	1,929	823		Rockbridge	5,666	577
Botetourt	10,718	718		Rockingham	30,877	796
Brunswick	4,020	613		Russell	6,817	724
Buchanan	6,508	756		Scott	4,662	571
Buckingham	3,320	666		Shenandoah	13,701	660
Campbell	16,703	871		Smyth	12,797	611
Caroline	5,619	700		Southampton	3,703	631
Carroll	6,494	560		Spotsylvania	34,202	684
Charles City	1,501	763		Stafford	42,307	918
Charlotte	2,970	645		Surry	2,165	1,678
Chesterfield	132,258	840		Sussex	3,726	700
Clarke	3,779	786		Tazewell	14,717	586
Craig	675	640		Warren	11,955	692
Culpeper	15,322	763		Washington	20,642	660
Cumberland	1,389	555		Westmoreland	3,297	555
Dickenson	3,315	698		Wise	11,555	637
Dinwiddie	8,268	752		Wythe	11,522	600
Essex	4,021	588		York	21,038	679
Fairfax County	588,080	1,622		Alexandria City	93,845	1,400
Fauquier	21,792	852		Bedford City	0	0
Floyd	3,066	536		Bristol City	9,795	696
Fluvanna	4,232	699		Buena Vista City	2,532	588

Area	Employment March 2016	Average weekly wage (1)		Area	Employment March 2016	Average weekly wage (1)
Franklin	14,792	575		Charlottesville City	38,967	932
Frederick	29,765	812		Chesapeake City	97,328	763
Giles	4,601	713		Colonial Heights City	10,771	587
Gloucester	9,251	598		Covington City	4,036	888
Goochland	14,798	1,984		Danville City	26,661	650
Grayson	2,607	559		Emporia City	3,231	533
Greene	3,632	627		Fairfax City	19,235	1,060
Greensville	4,521	709		Falls Church City	11,450	1,185
Halifax	12,222	659		Franklin City	4,434	556
Hanover	49,563	771		Fredericksburg City	23,865	763
Henrico	187,586	1,028		Galax City	6,334	538
Henry	15,707	597		Hampton City	54,457	841
Highland	498	559		Harrisonburg City	31,163	662
Isle of Wight	10,767	950		Hopewell City	7,562	1,000
James City	28,251	712		Lexington City	4,854	753
King and Queen	946	716		Lynchburg City	51,215	775
King George	11,317	1,341		Manassas City	22,107	1,116
King William	3,821	798		Manassas Park City	3,164	795
Lancaster	4,372	652		Martinsville City	9,069	618
Lee	4,486	601		Newport News City	95,469	1,016
Loudoun	155,881	1,193		Norfolk City	140,167	987
Louisa	9,505	854		Norton City	3,668	673
Lunenburg	2,587	579		Petersburg City	13,187	701
Madison	3,035	644		Poquoson City	1,683	565
Mathews	1,513	506		Portsmouth City	44,257	913
Mecklenburg	11,658	605		Radford City	5,827	797
Middlesex	3,138	592		Richmond City	152,609	1,173
Montgomery	42,135	760		Roanoke City	67,321	816
Nelson	4,103	551		Salem City	20,309	909
New Kent	4,149	647		Staunton City	11,107	632
Northampton	4,720	571		Suffolk City	28,715	865
Northumberland	2,320	659		Virginia Beach City	173,047	765

Area	Employment March 2016	Average weekly wage (1)		Area	Employment March 2016	Average weekly wage (1)
Nottoway	5,734	636		**Waynesboro City**	9,655	697
Orange	9,729	669		**Williamsburg City**	12,778	730

Footnotes:
(1) Average weekly wages were calculated using unrounded data,
(2) Totals for the United States do not include data for Puerto Rico or the Virgin Islands.
NOTE: Includes workers covered by Unemployment Insurance (UI) and Unemployment Compensation for Federal Employees (UCFE) programs. Data are preliminary.

Information from http://www.bls.gov/regions/mid-atlantic/news-release/countyemploymentandwages_virginia.htm#Table2.xlsx.f.1. Last updated September 29, 2016.

<u>Appendix C – Virginia Fact Sheet by The Pew Charitable Trusts on Virginians' Access to Employer-Sponsored Plans</u>

Overview of retirement plan access and participation

Of the 2.8 million wage and salary workers in Virginia, 55 percent have access to a retirement plan at their workplace while 44 percent participate in a plan. Compared to other states in the immediate region, Virginia does relatively well, with only Pennsylvania workers having higher rates of access to a workplace retirement plan, while North Carolina, West Virginia, Maryland, Delaware, New Jersey, and New York workers have lower rates of access.

Metropolitan statistical areas

Worker's access and participation also varies across Virginia's metropolitan statistical areas (MSA).[192] Workers living in the Northern Virginia, Washington, D.C. suburbs tend to have higher rates of access and participation. Sixty percent of all workers living in the Washington Metropolitan Area had access to a workplace retirement plan, while 50 percent participated.[193] Among all workers in Richmond and Virginia Beach, 54 and 53 percent, respectively, had access while 43 and 41 percent participated.[194]

Factors associated with workplace retirement plan access and participation

Several factors are associated with access to and participation in retirement plans. In general, participation closely tracks access which in turn is associated with labor force status, firm size, industry, income, education, race and ethnicity, and age.

Labor force status:

- Full-time workers tend to have more access to, and greater participation in, retirement plans than part-time workers.[195]
- There are roughly 4 million workers in Virginia. Of these, approximately 300,000 are self-employed and just over 2.8 million are employed in the private sector, while about another 800,000 work for the government. For this paper we focus on private sector wage and salary workers,[196] 70 percent of which are full-time, full-year workers and 30 percent are either part-time or part-year workers.
- More than 700,000 full-time, full-year private sector workers in Virginia lack access to a workplace retirement plan. There are roughly another 500,000 part-time and part-year workers without access in Virginia. Virginia has higher rates of access to and participation in workplace retirement plans than the nation as a whole. Sixty-three

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[192] Metropolitan statistical areas contain a core urban area of at least 50,000 people and include the counties containing the core urban area and any adjacent counties with significant social and economic integration. For more information, see http://www.census.gov/population/metro/.
[193] For the Washington, DC metropolitan statistical area, estimates are restricted to only those workers who reside in Virginia.
[194] Analysis of metropolitan statistical areas (MSA) is limited to MSAs with a population of at least 500,000. Only Richmond, Virginia Beach, and Washington, DC exceed this criteria.
[195] Workers are identified as full-time, full-year if they usually work at least 35 hours a week and they worked 50 or more weeks in the previous year. This group is referred to as simply full-time workers. Part-time workers are those who either work less than 35 hours a week or those who worked less than 50 weeks in the previous year. This group is referred to simply as part-time workers.
[196] Throughout this report, unless otherwise specified, worker refers to a private sector wage and salary worker between the ages of 18 to 64. Full-time and part-time worker distinctions are also made throughout.

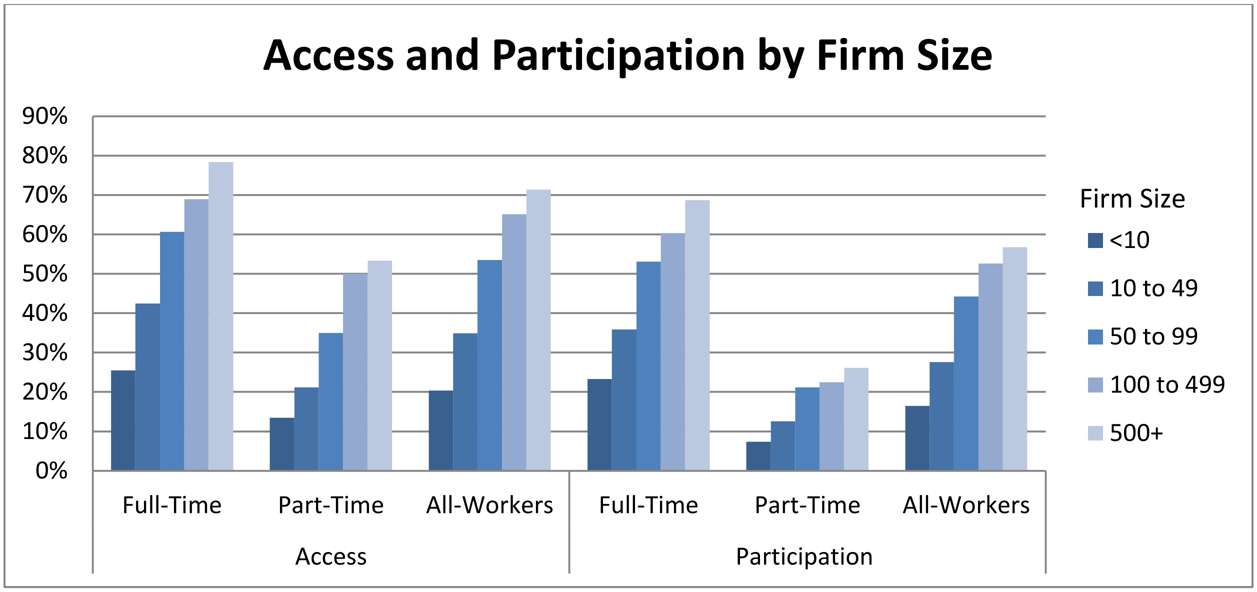
percent of Virginia's full-time workers have access to a retirement plan compared to 57 percent nationally. Fifty-five percent of these same workers participate in a workplace retirement plan in Virginia compared to 49 percent nationally.

- Part-time workers have lower access and participation when compared with their full-time counterparts for a number of reasons. Many retirement plans may require a certain number of hours worked or time period of employment before a worker is eligible to join the plan. For example, a common eligibility requirement is 1,000 hours of work in a year. In addition, part-time workers usually make less money and therefore may not feel that they can afford to contribute to a retirement plan.

Firm size:

- Larger firms tend to offer their employees retirement benefits at higher rates than smaller firms. Previous small business surveys have cited concerns about administrative costs, legal and regulatory requirements, lack of employee interest, and liability issues as factors that hinder smaller firms from offering retirement plans.[197]
- Full-time workers in Virginia have similar rates of employment at small employers (employers with less than ten employees) compared to the U.S. as a whole, with 11 percent of these workers employed at small employers compared to 12 percent nationally. Slightly more full-time workers in Virginia are employed at large firms (500 or more employees), representing 49 percent of the Virginia's full-time workforce compared to 47 percent across the United States.
- Twenty percent of Virginia's part-time workers are employed at small firms, the same rate as the rest of the nation. However, part-time workers are more represented at large firms, 44 percent in Virginia compared to 40 percent nationally.
- All workers see increased access and participation as the size of their employer increases.
- While more than 53 percent of part time workers at firms with 500 employees or more had access to a retirement plan, only 26 percent of these workers participated in a workplace retirement plan.

[197] *EBRI Notes, Vol. 24 Number 9*, Employee Benefit Research Institute, Sept. 2003, p. 2, http://www.ebri.org/pdf/notespdf/0903notes.pdf. This reasoning is consistent: more than half of small-business owners who did not offer a retirement plan listed cost as the largest obstacle in a 2013 Main Street Alliance-American Sustainable Business Council survey: *Poll Report: Small Business Owners' Views on Retirement Security*, Main Street Alliance-American Sustainable Business Council, June 2013, p. 7, http://asbcouncil.org/sites/default/files/library/docs/asbc_retirement_poll_report_june2013.pdf.

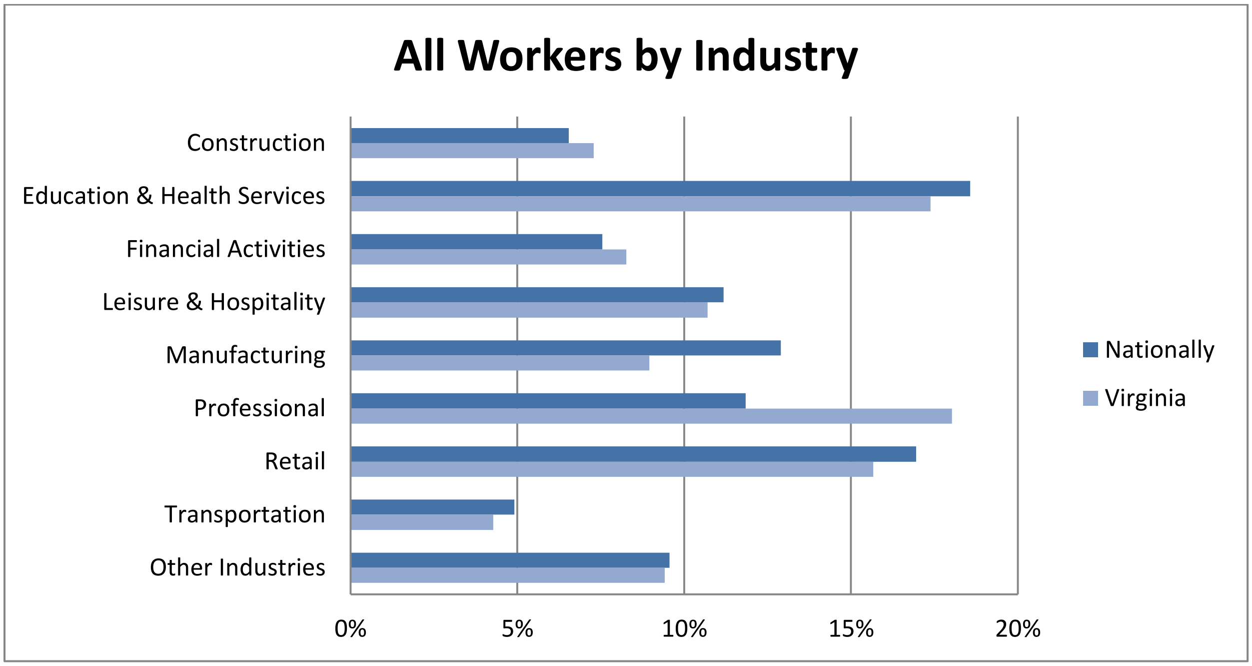


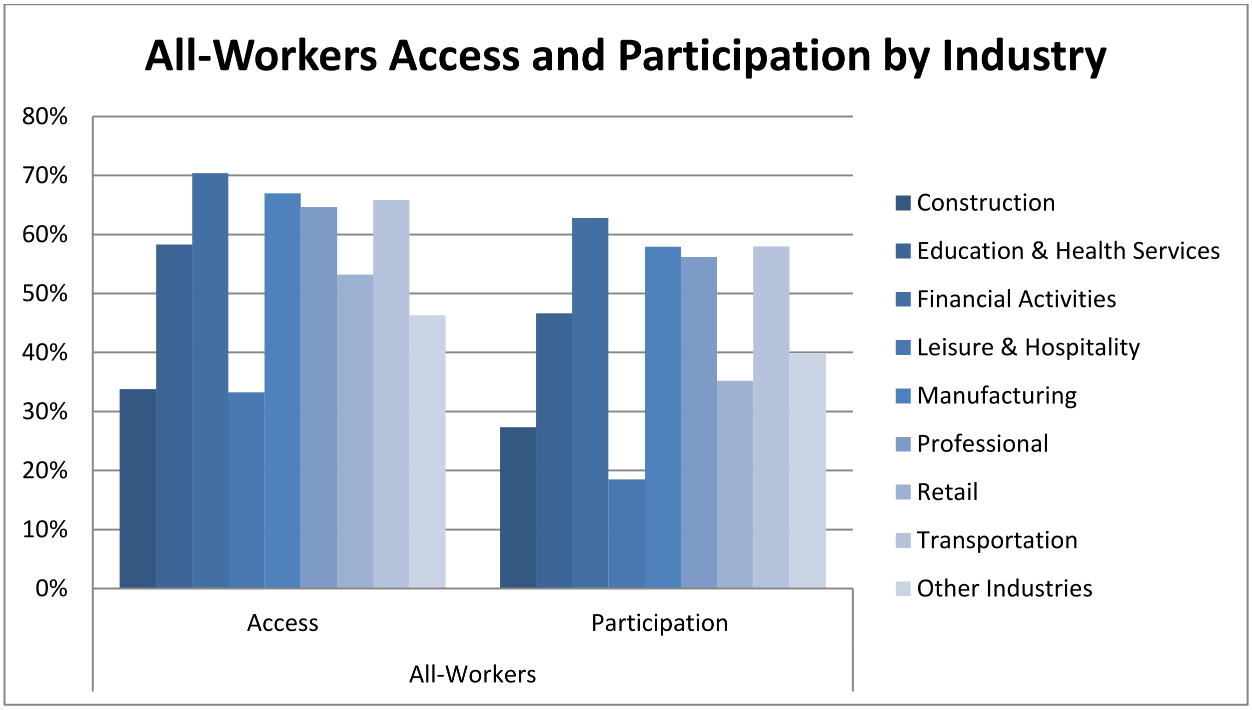
Industry:

- The type of industry also can make a big difference in whether employers offer retirement plans. Industries such as manufacturing, education and health services, financial activities and transportation, tend to offer retirement benefits at a rate higher than the national average while industries such as leisure and hospitality, and construction tend to offer retirement benefits at rates below the average.
- Amongst Virginia's full-time workers, a larger proportion are concentrated in professional services, 20 percent in Virginia versus 12 percent nationally and fewer in manufacturing, 11 percent in Virginia versus 16 percent nationally. Similarly, full-time workers in Virginia are less represented in retail, education, and health services than the national average.
- Twenty percent of part-time workers in Virginia work in the leisure and hospitality industry, slightly higher than the 18 percent of part-time workers nationally. Another 20 percent of Virginia's part-time workers are employed in the retail industry, roughly comparable to the 19 percent of part-time workers working in retail across the country.
- The type of industry can affect retirement plan access and participation in multiple ways. Some have more lower-wage, part-time, short-term, and seasonal workers, the kind of work for which employer-based plans are less common.[198] For example, the leisure and hospitality industry faces high employee turnover, with a separation rate almost double that of total nonfarm employment overall.[199] As of January 2014, the median tenure for workers in the leisure and hospitality industry was 2.3 years. In comparison, the median

[198] "The Relationship Between Access to Benefits and Weekly Work Hours," John L. Bishow, U.S. Bureau of Labor Statistics Monthly Labor Review, June 2015, http://www.bls.gov/opub/mlr/2015/article/pdf/the-relationship-between-access-to-benefits-and-weekly-work-hours.pdf.
[199] "Job Openings and Labor Turnover—September 2015," news release, U.S. Bureau of Labor Statistics, http://www.bls.gov/news.release/pdf/jolts.pdf.

for workers in the manufacturing industry was 5.9 years.[200] Additionally, certain industries may face economic challenges that reduce the likelihood that employers will offer retirement plans.





[200] "Table 5: Median Years of Tenure With Current Employer for Employed Wage and Salary Workers by Industry, Selected Years, 2004-14," BLS, economic news release, last modified Sept. 18, 2014, http://www.bls.gov/news.release/tenure.t05.htm.

Income:

- Jobs that offer lower wages or salary tend to offer fewer retirement benefits and employees with lower incomes tend to participate at lower levels.
- A lower percentage of Virginia's full-time workers earn less than $25,000 a year compared with workers nationally. Workers with less than $25,000 in personal income make up 18 percent of these workers in Virginia, compared to 20 percent nationally. Higher income workers (personal income of $100,000 or more) represent a larger share of workers in Virginia than they do nationally, with 15 percent in Virginia and 11 percent in the U.S.
- Wage and salary income can indicate "job quality."[201] Lower-wage jobs tend to be in sectors where employers are less likely to offer pensions or retirement savings plans.[202] For instance, those employed in food services have lower average wages than those employed in finance and are less likely to have access to a workplace retirement plan.[203]
- Income also plays a role in whether workers can participate in a retirement plan. Those with low incomes may need their full pay—or more—to meet their regular expenditures. In a recent Pew survey on family finances, 20 percent of respondents reported spending more than they made in most months.[204] In addition, as reported by Pew elsewhere, income in many families can fluctuate widely from year to year. Nearly half of American households have experienced an income drop or gain of more than 25 percent in a two-year period. That can leave many low- to moderate-income workers with insufficient short-term or emergency savings.[205] Some of these workers may be unwilling to commit to making contributions to a retirement savings plan when faced with such volatility.[206]

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201 "Where Are All the Good Jobs Going? What National and Local Job Quality and Dynamics Mean for U.S. Workers," Harry J. Holzer et al., Russell Sage Foundation, 2011; "Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States 1970s to 2000s," Arne Kalleberg, Russell Sage Foundation, 2013. See Holzer et al. for a discussion of job quality and recent trends in this area. Kalleberg also discusses job quality as a function of pay, work conditions, and access to health and retirement benefits.

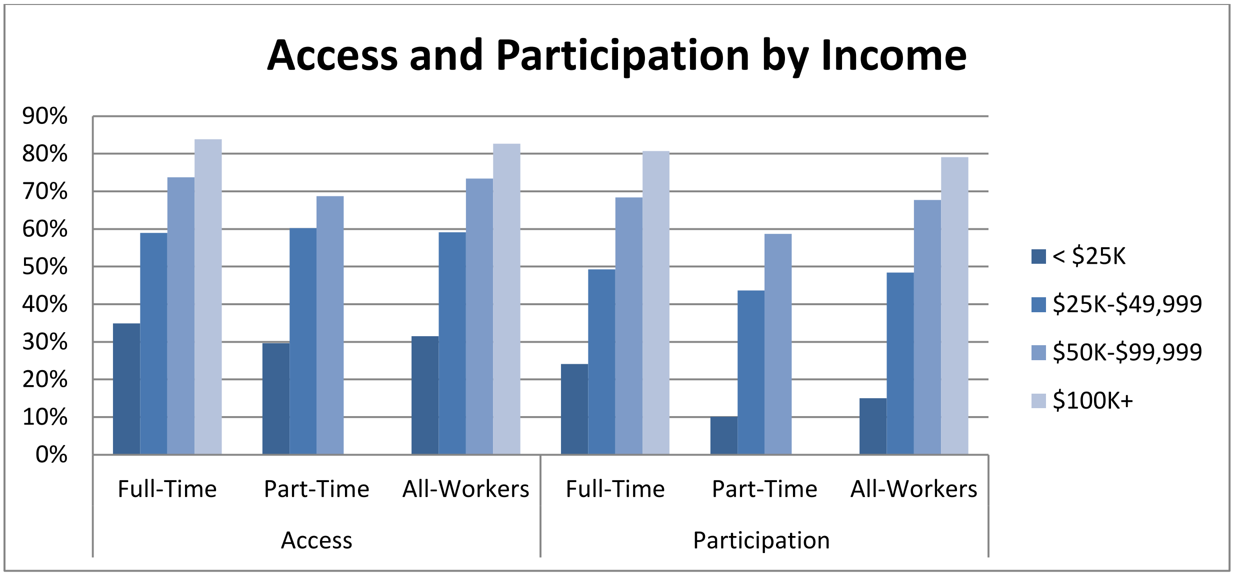
202 "The Distribution of Major Tax Expenditures in the Individual Income Tax System," Congressional Budget Office, accessed Sept. 16, 2015, https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/43768_DistributionTaxExpenditures.pdf. Higher average wages in a business may make offering a retirement plan and other benefits more attractive, in part because the associated tax incentives are generally larger for higher earners.

203 "May 2014 National Industry-Specific Occupational Employment and Wage Estimates," BLS, last modified March 25, 2015, http://www.bls.gov/oes/current/oessrci.htm.

204 "Survey of American Family Finances, Top-Lines Accompanying 'Americans' Financial Security: Perception and Reality,' " The Pew Charitable Trusts, 2015, 4, http://www.pewtrusts.org/~/media/assets/2015/03/fsm-poll-results-toplines_artfinal_v3.pdf.

205 "The Precarious State of Family Balance Sheets," The Pew Charitable Trusts, 3.

206 Low lifetime earners also may require less in savings to maintain their pre-retirement standard of living because of Social Security's progressive benefit formula.



Note: The top income group is excluded for part-time workers due to low sample size.

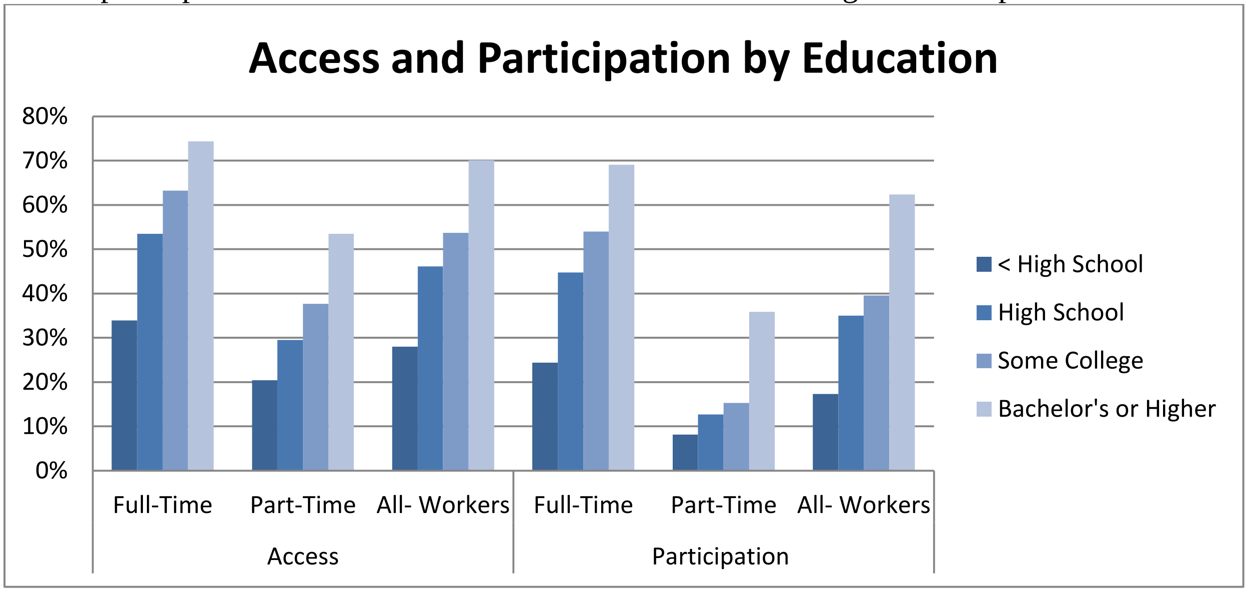
Education:

- Workers with lower educational attainment tend to have lower rates of access and participation than those with higher rates of educational attainment.
- Virginia has higher rates of educational attainment amongst its workers than the U.S. overall. 39 percent of Virginia's full-time workers have at least a bachelor's degree or higher compared to 34 percent for the nation as a whole. While only 7 percent of full-time workers in Virginia have not completed their high school degree, compared to 8 percent nationally. Part-time workers similarly have higher rates of educational attainment. Part-time workers in Virginia with at least a Bachelor's make up 23 percent of part-time workers state-wide compared to 20 percent nationally.
- Education can affect retirement plan access and participation in multiple ways. Education typically contributes to economic outcomes such as job quality and income. For example, the median lifetime earnings for workers with a high school diploma are about $1 million less than for workers with a bachelor's degree.[207] And having limited economic resources can make saving for retirement more difficult. Education influences where an individual can find work, as well as the type of industry and occupation.[208]
- Education also ties into financial literacy and the willingness to join a retirement plan.[209] For example, those with higher levels of education or within certain disciplines, such as

[207] "The College Payoff: Education, Occupations, Lifetime Earnings," Anthony P. Carnevale, Stephen J. Rose, and Ban Cheah, Georgetown University Center on Education and the Workforce, 2014, accessed Sept. 16, 2015, https://cew.georgetown.edu/wp-content/uploads/2014/11/collegepayoff-complete.pdf. Note that the differences in lifetime earnings cannot be wholly attributed to the degree itself and may in part reflect the underlying capabilities and characteristics of those individuals obtaining additional formal education.
[208] "Educational Attainment for Workers 25 Years and Older by Detailed Occupation," BLS, last modified Dec. 19, 2013, http://www.bls.gov/emp/ep_table_111.htm.
[209] "How Ordinary Consumers Make Complex Economic Decisions: Financial Literacy and Retirement Readiness," Annamaria Lusardi and Olivia S. Mitchell, National Bureau of Economic Research, 2009, Working Paper No.

mathematics or economics, could be more comfortable with savings concepts and the benefits of participation.[210] More broadly, many workers may not have a basic understanding of how to prepare for retirement. According to the 2012 Financial Capability Survey conducted by the Financial Industry Regulatory Authority, only 37 percent of respondents had ever attempted to calculate their retirement savings needs. Among those who did not complete high school, the share was just 15 percent.

- A similar proportion of part-time workers with at least a bachelor's degree have access to a workplace retirement as full-time workers with just a high school diploma. Additionally, this same group of part-time workers with at least a bachelor's degree participates at lower rates than full-time workers with a high school diploma.



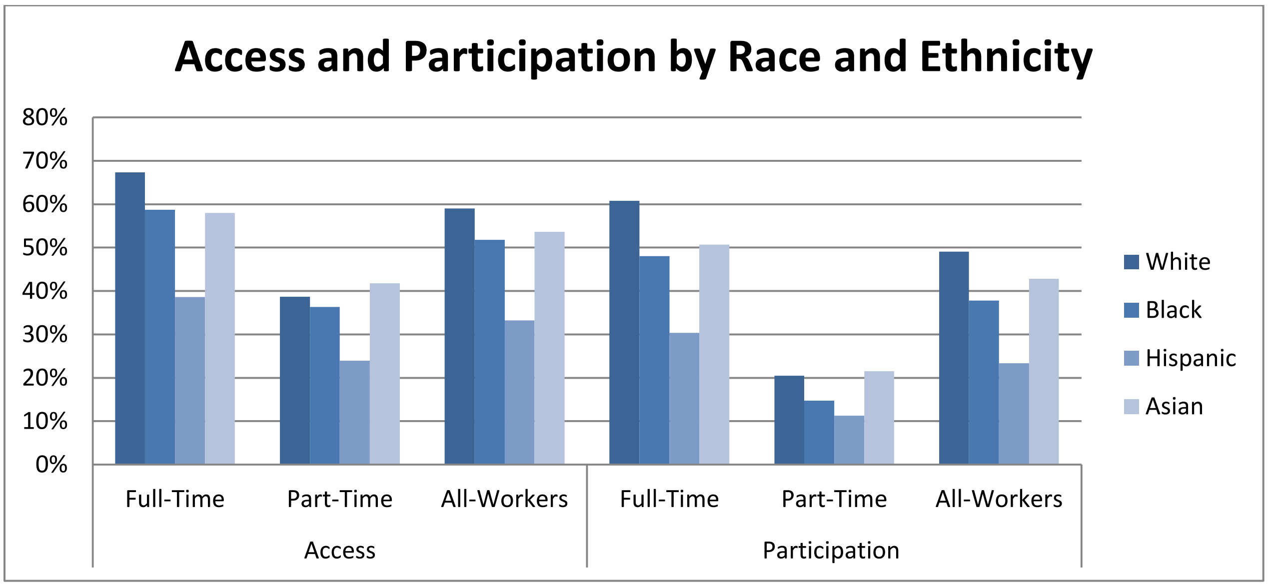
Race and ethnicity:

- Hispanic, black, and Asian employees tend to have lower rates of access to, and participation in, retirement plans than white employees.
- Virginia has substantially more blacks and fewer Hispanics than the U.S. overall. 17 percent of full-time and 18 percent of part-time workers in Virginia are black. Nationally, only 10 percent and 11 percent of workers identify as black respectively. Hispanics make up only 8 percent of full-time and 9 percent of part-time workers in Virginia. Across the U.S. Hispanics make up 16 percent of full-time workers and 17 percent of part-time workers.

15350, http://www.nber.org/papers/w15350.pdf; "Do Financial Literacy and Mistrust Affect 401(k) Participation?," Julie R. Agnew et al., Center for Retirement Research at Boston College Brief, 2007, p. 7–17, http://crr.bc.edu/wp-content/uploads/2007/11/IB_7-17.pdf.

[210] "Baby Boomer Retirement Security: The Roles of Planning, Financial Literacy, and Housing Wealth," Annamaria Lusardi and Olivia S. Mitchell, National Bureau of Economic Research, 2006, Working Paper No. 12585, http://www.nber.org/papers/w12585.pdf. Previous research has shown that, compared with less educated groups, older workers with a bachelor's degree or higher are more likely to be able to correctly answer various financial literacy questions, such as how to calculate compound interest, which is a key concept in understanding the benefits of long-term savings.

- In the context of retirement savings, race and ethnicity can serve as a proxy for economic variables such as income, wealth, job type, or industry of employment.
- In addition to economic considerations, race and ethnicity may affect retirement savings behavior in other ways, such as lower levels of trust and comfort with financial institutions and the investment process in general. For example, a 2008 survey of investors found that black households show substantial interest in steps to boost confidence and education in money matters, such as employer-based one-on-one consultations with financial advisers.[211] A greater percentage of black than white households said this type of outreach would encourage them to increase investments in defined contribution plans.[212] In addition to a lack of trust in financial institutions, Hispanics have noted factors such as language barriers and problems using nontraditional forms of identification as reasons for staying away from mainstream financial services.[213]



[211] "The Ariel/Schwab Black Investor Survey: Saving and Investing Among Higher Income African-American and White Americans," Ariel Investments LLC/The Charles Schwab Corp., 2008, accessed Sept. 16, 2015, https://www.arielinvestments.com/landmark-surveys/.

[212] "Black Investors Lack Trust in Brokers, Shy Away From Investing in Stocks," Tristan Mabry, May 14, 1999, *The Wall Street Journal*, http://www.wsj.com/articles/SB926636527156960101; "Disparities for Women and Minorities in Retirement Savings," 2010, U.S. Department of Labor, accessed Sept. 16, 2015, http://www.dol.gov/ebsa/publications/2010ACreport3.html. Other research suggests that historically based trust and comfort issues are an ongoing concern for certain minority populations. In addition, Agnew et al. (2007) find that mistrust is a negative, significant predictor on 401(k) plan participation in an automatic enrollment plan structure but is not significant in a voluntary program ("Do Financial Literacy and Mistrust Affect 401(k) Participation?" Julie R. Agnew et al.). The Federal Deposit Insurance Corp. reported that approximately one-third of those without a bank account reported distrust in or dislike of banks as one reason they were unbanked. (See "2013 FDIC National Survey of Unbanked and Underbanked Households," 2014, https://www.fdic.gov/householdsurvey/2013report.pdf.)

[213] "2013 FDIC National Survey of Unbanked and Underbanked Households," FDIC, 2014, https://www.fdic.gov/householdsurvey/2013report.pdf; , "Banking in Color: New Findings on Financial Access for Low-and-Moderate Income Communities," National Council of La Raza, 2014, http://publications.nclr.org/bitstream/handle/123456789/1203/bankingincolor_web.pdf?sequence=1&isAllowed=y.

Age:

- Relatively older workers tend to have greater rates of access and participation than relatively younger workers.
- Virginia's workers have a similar age distribution as the U.S overall.
- Age can be a factor in retirement savings in multiple ways. One is the ability to save. On average, younger workers have less income than older ones; saving for retirement might not be reasonable or rational from a life cycle perspective.[214] Debt also may be a concern. Although the share of younger households—those younger than 35—holding debt is lower than that among many older age groups, these households have the highest median dollar amount of unsecured debt.[215] Because this debt is likely to have high interest rates, paying it off before saving for retirement might be the best path for some workers. Research from Pew suggests that education debt is a particular concern for millennials: 41 percent of this age group holds this type of debt, and the median amount owed is $20,000.[216] Debt could reduce demand for retirement plans among young workers and curtail participation even when offered.
- Younger workers also might have different saving priorities.[217] For example, some may be more interested in saving for a house, financing education, or building personal liquidity. Data from the 2013 Survey of Consumer Finances show that among households that reported saving during the past year, the percentage that listed retirement as their top savings goal was far lower among households headed by an individual under age 35 than among older households.[218] Older workers with more wealth and income and a clearer focus on retirement might be expected to more frequently seek employment at a firm with a retirement plan and participate when given the opportunity.
- Part-time workers of all ages have similar levels of access to employer-based retirement plans. Still, as workers age, a greater proportion participate in employer-based retirement plans, regardless of whether they are full or part-time.

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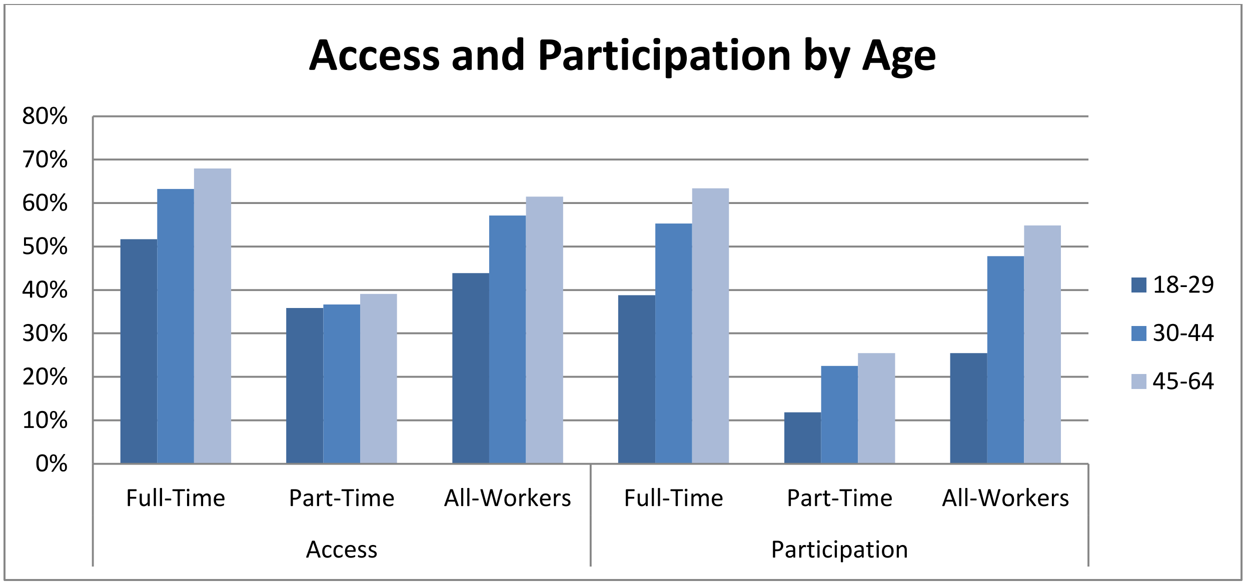
214 "Smoothing the Path: Balancing Debt, Income, and Saving for the Future," Scott A. Wolla, Federal Reserve Bank of St. Louis Page One Economics Newsletter, November 2014, p. 1–5, https://research.stlouisfed.org/pageone-economics/uploads/newsletter/2014/PageOne1114NEW.pdf; "Lifetime Earnings Patterns, The Distribution of Future Social Security Benefits, and the Impact of Pension Reform," Barry Bosworth, Gary T. Burtless, and C. Eugene Steuerle, Center for Retirement Research at Boston College, http://www.urban.org/research/publication/lifetime-earnings-patterns-distribution-future-social-security-benefits-and-impact-pension-reform/view/full_report.

215 "Household Debt in the U.S.: 2000 to 2011," Marina Vornovytskyy, Alfred Gottschalck, and Adam Smith, U.S. Census Bureau, 2013, https://www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf.

216 "The Complex Story of American Debt," The Pew Charitable Trusts, 2015, 3, http://www.pewtrusts.org/~/media/Assets/2015/07/Reach-of-Debt-Report_ARTFINAL.pdf.

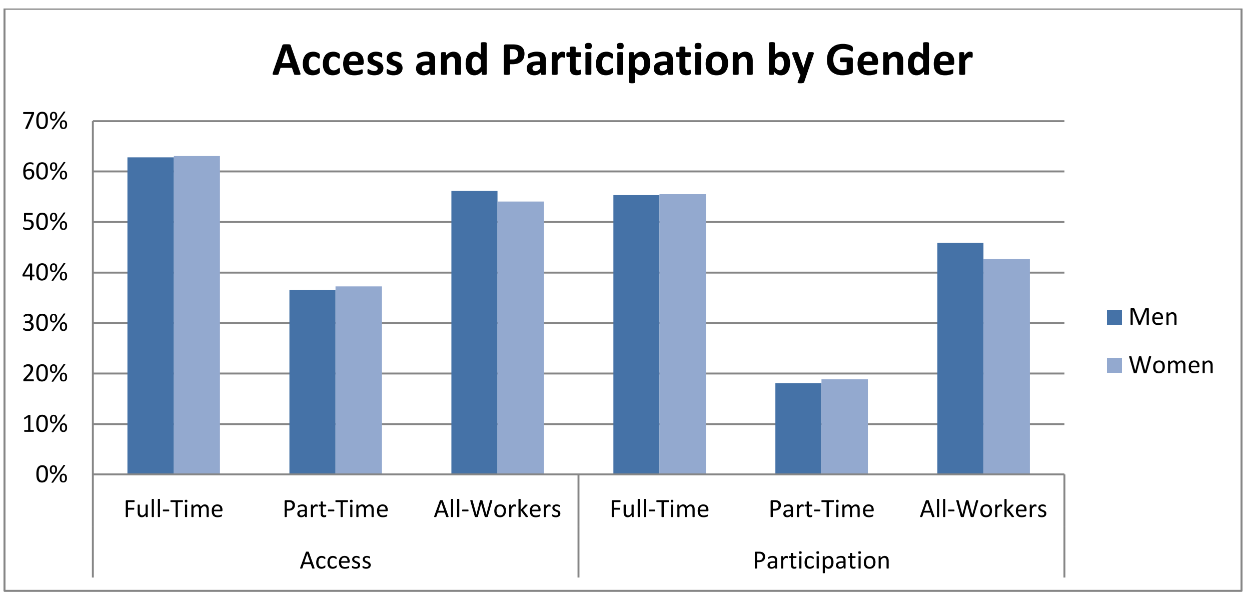
217 "What Determines 401(k) Participation and Contributions?" Alicia H. Munnell, Annika Sunden, and Catherine Taylor, 2001/2002, *Social Security Bulletin* 64, no. 3, p. 64–75, http://ssa.gov/policy/docs/ssb/v64n3/v64n3p64.pdf.

218 The authors' analysis used the Survey Documentation and Analysis (SDA) online tool, http://www.federalreserve.gov/econresdata/scf/scfindex.htm; for more detail on savings motives and behavior, see "Saving Motives and 401(k) Contributions," Jing J. Xiao, 1997, *Financial Counseling and Planning* 8, no. 2 https://afcpe.org/assets/pdf/vol828.pdf.



Gender:

- Women and men tend to have similar rates of access and participation over all.
- Virginia's workers have a similar gender distribution as the U.S overall.
- While women have similar if not higher rates of access and participation amongst both full- and part-time workers, because a higher proportion of women are employed part-time, and part-time workers tend to have less access to employer-sponsored retirement plan options than full-time workers, women have lower overall access and participation when looking at all workers.



Notes on the Data: Figures reported are based on a pooled version of the 2010-2014 Minnesota Population Center's Integrated Public Use Microdata Series (IPUMS) CPS, Annual Social

Economic (ASEC) Supplement.[219] Unless otherwise noted, "worker" means a private sector wage and salary worker between the ages of 18-64.[220] Workers are identified as full-time, full-year if they usually work at least 35 hours a week and they worked 50 or more weeks in the previous year. Part-time workers are those who either work less than 35 hours a week or those who worked less than 50 weeks in the previous year.

[219] Integrated Public Use Microdata Series, Current Population Survey: Version 4.0. [Machine-readable database]. Miriam King, Steven Ruggles, J. Trent Alexander, Sarah Flood, Katie Genadek, Matthew B. Schroeder, Brandon Trampe, and Rebecca Vick, Minnesota Population Center, 2015, Minneapolis, MN.

[220] The CPS ASEC Supplement is conducted jointly by the U.S. Census Bureau and the Bureau of Labor Statistics and asks questions about access to employer or union sponsored retirement and pension plans, and participation in these plans. Note that the CPS ASEC does not specifically ask respondents to identify whether or not they were eligible to participate for a plan their employer provided. For the purpose of this analysis, those who work for an employer who provides a plan are considered to have access to a retirement plan, regardless of whether or not they were eligible to participate in this plan. Also, readers should be aware that the CPS ASEC data on pension access and participation is self-reported. Previous work suggests that survey respondents tend to underreport retirement plan access and participation (Dushi, Iams, and Lichtenstein, 2011, Munnell and Bleckman, 2014).

Appendix D – The Pew Charitable Trusts Comment Letter

August 1, 2016

Patricia S. Bishop
Director
Virginia Retirement System
P.O. Box 2500
Richmond, VA 23218-2500

Re: Comments on the Draft Study by the HB 1998 Retirement Plans Working Group

Dear Director Bishop,

The Pew Charitable Trusts' retirement savings team studies the challenges that American workers are facing in trying to save for retirement, the barriers that employers experience in trying to offer retirement savings plans for their workers, and the public policy initiatives that would address these challenges and barriers. We have published reports and other material on several topics related to retirement security, including "Who's In, Who's Out", which details access to and participation in retirement savings plans in each of the 50 states, and "How States Are Working to Address The Retirement Savings Challenge," which analyzes state legislation designed to help private sector workers save for retirement. We appreciate the opportunity to comment on the working group's draft study as it continues to explore retirement savings options for private sector workers in the Commonwealth of Virginia.

In these comments we will address retirement plan access and participation in Virginia as well as factors associated with access and participation, which include labor force status, employer size and industry, income, education, age, race and ethnicity, and gender.

Overview of retirement plan access and participation in Virginia

Of the 2.8 million private sector wage and salary workers in Virginia, 55 percent have access to a retirement plan at their workplace while 44 percent participate in a plan. Compared to other states in the immediate region, Virginia does relatively well, with only Pennsylvania workers having higher rates of access to a workplace retirement plan, while North Carolina, West Virginia, Maryland, Delaware, New Jersey, and New York workers have lower rates of access.

Workers' access and participation also varies across Virginia's metropolitan statistical areas (MSA).[1] Workers living in the Northern Virginia, Washington, D.C. suburbs tend to have higher rates of access and participation. Sixty percent of all workers living in the Washington Metropolitan Area had access to a workplace retirement plan, while 50 percent participated.[2]

[1] Metropolitan statistical areas contain a core urban area of at least 50,000 people and include the counties containing the core urban area and any adjacent counties with significant social and economic integration. For more information, see http://www.census.gov/population/metro/.

[2] For the Washington, D.C., metropolitan statistical area, estimates are restricted to only those workers who reside in Virginia.

Among all workers in Richmond and Virginia Beach, 54 and 53 percent, respectively, had access while 43 and 41 percent participated.[3]

Factors associated with workplace retirement plan access and participation

Several factors are associated with access to and participation in retirement plans. In general, participation closely tracks access, which in turn is associated with labor force status, firm size, industry, income, education, race and ethnicity, age, and gender.

Labor force status:

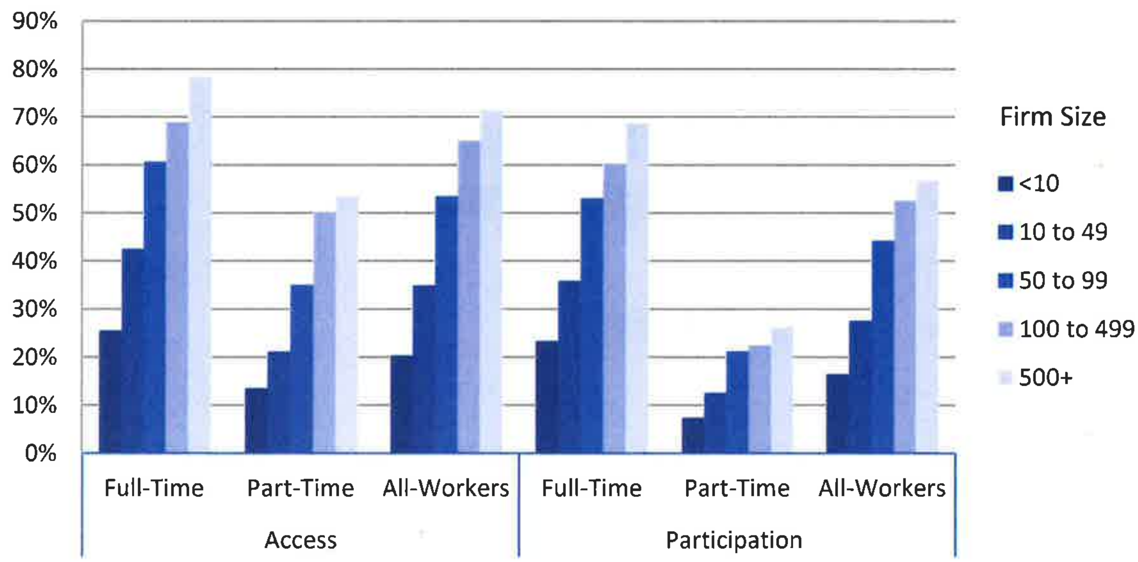
- Full-time workers tend to have more access to, and greater participation in, retirement plans than part-time workers.[4]
- There are roughly 4 million workers in Virginia. Of these, just over 2.8 million are employed in the private sector, approximately 300,000 are self-employed, and about another 800,000 work for the government. For this paper we focus on private sector wage and salary workers,[5] 70 percent of which are full-time, full-year workers and 30 percent are either part-time or part-year workers.
- More than 700,000 full-time, full-year private sector workers in Virginia lack access to a workplace retirement plan. There are roughly another 500,000 part-time and part-year workers without access in Virginia. Virginia has higher rates of access to and participation in workplace retirement plans than the nation as a whole. Sixty-three percent of Virginia's full-time workers have access to a retirement plan compared to 57 percent nationally. Fifty-five percent of these same workers participate in a workplace retirement plan in Virginia compared to 49 percent nationally.
- For part-time or part-year workers in Virginia, 37 percent have access to a retirement plan and 19 percent participate. Nationally, 32 percent of this same group have access and 17 percent participate.
- Part-time workers have lower access and participation when compared with their full-time counterparts for a number of reasons. Many retirement plans may require a certain number of hours worked or time period of employment before a worker is eligible to join the plan. For example, a common eligibility requirement is 1,000 hours of work in a year. In addition, part-time workers usually make less money and therefore may not feel that they can afford to contribute to a retirement plan even if they are eligible to participate.

[3] Analysis of metropolitan statistical areas (MSA) is limited to MSAs with a population of at least 500,000. Only Richmond, Virginia Beach, and Washington, D.C. exceed this criteria.
[4] Workers are identified as full-time, full-year if they usually work at least 35 hours a week and they worked 50 or more weeks in the previous year. This group is referred to as simply full-time workers. Part-time workers are those who either work less than 35 hours a week or those who worked less than 50 weeks in the previous year. This group is referred to simply as part-time workers.
[5] Throughout this report, unless otherwise specified, worker refers to a private sector wage and salary worker between the ages of 18 to 64. Full-time and part-time worker distinctions are also made throughout.

Employer size:

- Larger firms tend to offer their employees retirement benefits at higher rates than smaller firms.
- Full-time workers in Virginia have similar rates of employment at small employers, which we define as firms with less than ten employees, compared to the U.S. as a whole. Eleven percent of full-time workers are employed at small employers in the Commonwealth compared to 12 percent nationally. A slightly larger share of Virginia's full-time workers are employed at large firms, which have 500 or more employees, representing 49 percent of the Virginia's full-time workforce compared to 47 percent nationwide.
- Twenty percent of Virginia's part-time workers are employed at small firms, the same rate as the rest of the nation. However, a larger share of Virginia's part-time workers are employed at large firms, 44 percent in Virginia compared to 40 percent nationally.
- As shown in Figure 1 below, access and participation rates increase as the size of their employer increases. Only 20 percent of all workers at small firms have access to a retirement plan while 71 percent of workers at the largest employers have access. Previous small business surveys have cited administrative costs, legal and regulatory requirements, lack of employee interest, and liability issues as factors that hinder smaller firms from offering retirement plans to their workers.[6]
- However, firm size does not offset part-time work status. While more than 53 percent of part time workers at firms with 500 employees or more had access to a retirement plan, only 26 percent of these workers participated in a workplace retirement plan.

Figure 1: Retirement Plan Access and Participation in Virginia by Firm Size and Part- and Full-Time Work Status

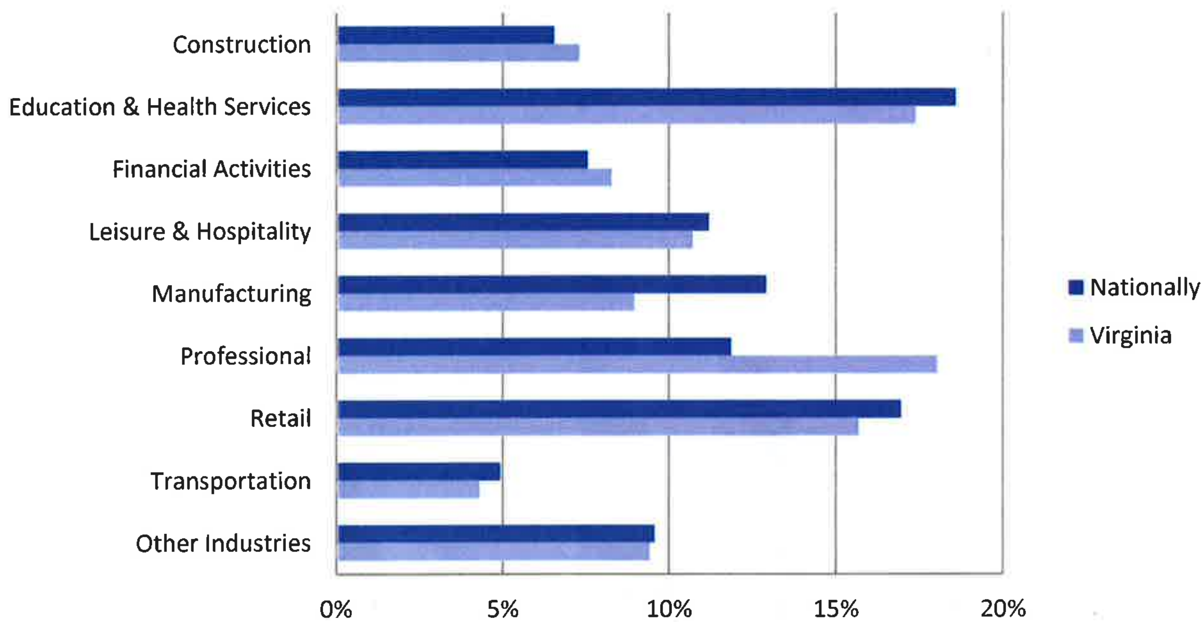


[6] Employee Benefit Research Institute, *EBRI Notes, Vol. 24 Number 9*, (Sept. 2003): 2. http://www.ebri.org/pdf/notespdf/0903notes.pdf. This reasoning is consistent: more than half of small-business owners who did not offer a retirement plan listed cost as the largest obstacle in a 2013 Main Street Alliance-American Sustainable Business Council survey: Main Street Alliance-American Sustainable Business Council, *Poll Report: Small Business Owners' Views on Retirement Security* (June 2013): 7, http://asbcouncil.org/sites/default/files/library/docs/asbc_retirement_poll_report_june2013.pdf.

Industry:

- The type of industry also can make a big difference in whether employers offer retirement plans. Industries such as manufacturing, education and health services, financial activities, and transportation tend to offer retirement benefits at rates higher than the national average while industries such as leisure and hospitality, and construction tend to offer retirement benefits at rates below the average.
- Figure 2 shows the distribution of workers across major industry categories for Virginia and the nation. Amongst Virginia's full-time workers, a larger proportion are concentrated in professional services, 20 percent in Virginia versus 12 percent nationally. Twenty percent of part-time workers in Virginia work in the leisure and hospitality industry, slightly higher than the 18 percent of part-time workers nationally.
- A smaller share of Virginians than across the United States work in manufacturing, 11 percent in Virginia versus 16 percent nationally. Similarly, full-time workers in Virginia are less represented in retail, education, and health services than the national average.
- Another 20 percent of Virginia's part-time workers are employed in the retail industry, roughly comparable to the 19 percent of part-time workers working in retail across the country.

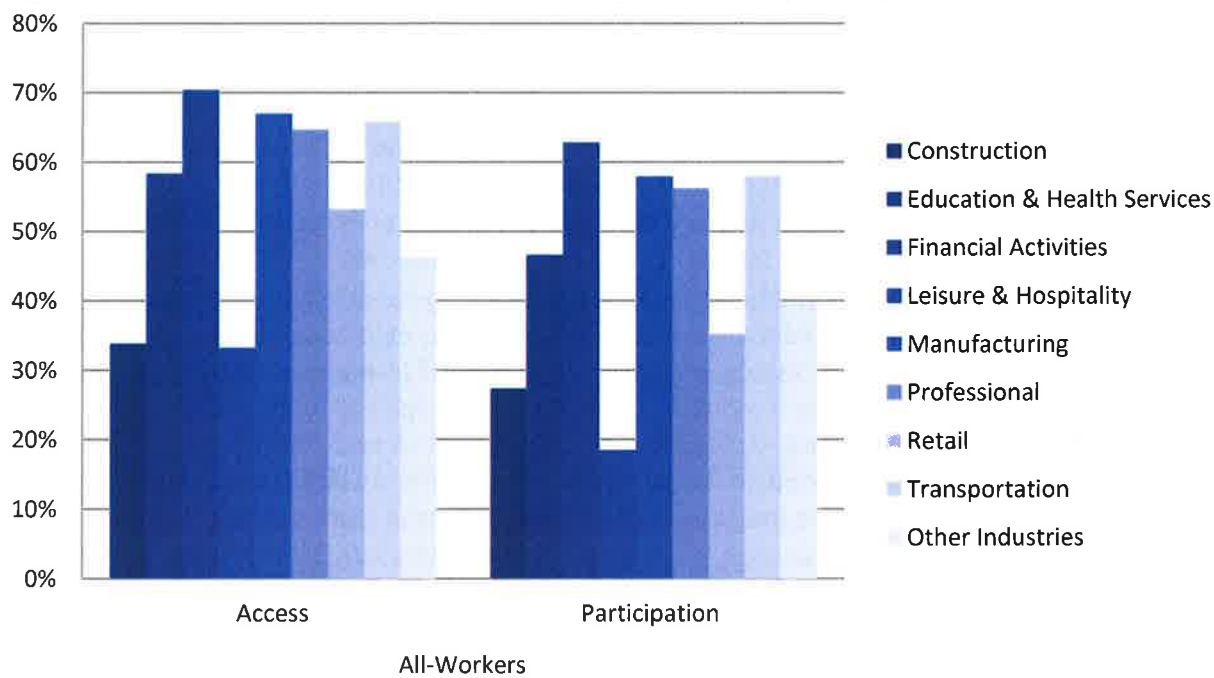
Figure 2: Workers by Industry, Virginia and Nationally



- Figure 3 illustrates how access and participation can vary by industry in Virginia. Construction and leisure and hospitality have similar rates of access, for example, at 34 and 33 percent, respectively. In contrast, workers in financial (70 percent), manufacturing (67 percent), professional (65 percent) and transportation (66 percent) industries have much higher access rates. Participation shows a similar pattern.

- The type of industry can affect retirement plan access and participation in multiple ways. Some have more lower-wage, part-time, short-term, and seasonal workers, the kind of work for which employer-based plans are less common.[7] For example, the leisure and hospitality industry faces high employee turnover, with a separation rate almost double that of total nonfarm employment overall.[8] As of January 2014, the median tenure for workers in the leisure and hospitality industry was 2.3 years. In comparison, the median for workers in the manufacturing industry was 5.9 years.[9] Additionally, certain industries may face economic challenges that reduce the likelihood that employers will offer retirement plans.

Figure 3: Retirement Plan Access and Participation in Virginia by Industry



[7] John L. Bishow, "The Relationship Between Access to Benefits and Weekly Work Hours," U.S. Bureau of Labor Statistics Monthly Labor Review (June 2015), http://www.bls.gov/opub/mlr/2015/article/pdf/the-relationship-between-access-to-benefits-and-weekly-work-hours.pdf

[8] U.S. Bureau of Labor Statistics, "Job Openings and Labor Turnover—September 2015," news release, http://www.bls.gov/news.release/pdf/jolts.pdf.

[9] BLS, economic news release, "Table 5: Median Years of Tenure With Current Employer for Employed Wage and Salary Workers by Industry, Selected Years, 2004-14,", last modified Sept. 18, 2014, http://www.bls.gov/news.release/tenure.t05.htm.

Income:

- Jobs that offer lower wages or salary tend to offer fewer retirement benefits and employees with lower incomes tend to participate at lower levels.
- A lower percentage of Virginia's full-time workers earn less than $25,000 a year compared with workers nationally. Workers with less than $25,000 in personal income make up 18 percent of these workers in Virginia, compared to 20 percent nationally. High income workers, those with personal income of $100,000 or more, represent a larger share of workers in Virginia (15 percent) than they do nationally (11 percent).
- Access to and participation in workplace retirement plans varies by household income, as shown in Figure 4. This study examines four different household income groups, with "low income" defined here as having less than $25,000 in household income, and $100,000 or more considered "high" household income.
- Low income workers have an access rate of 31 percent while 83 percent of those making at least $100,000 have access to a workplace retirement plan. While access rates for low-income part-time workers are similar to their full-time counterparts, the participation rate for part-timers is 14 percentage points lower than for full-time workers.
- Wage and salary income can indicate "job quality."[10] Lower-wage jobs tend to be in sectors where employers are less likely to offer pensions or retirement savings plans.[11]
- Income also plays a role in whether workers can participate in a retirement plan. Those with low incomes may need their full pay—or more—to meet their regular expenditures. In a recent Pew survey on family finances, 20 percent of respondents reported spending more than they made in most months.[12] In addition, as reported by Pew elsewhere, income in many families can fluctuate widely from year to year. Nearly half of American households have experienced an income drop or gain of more than 25 percent in a two-year period. That can leave many low- to moderate-income workers with insufficient short-term or emergency savings.[13] Some of these workers may be unwilling to commit to making contributions to a retirement savings plan when faced with such volatility.[14]

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[10] Harry J. Holzer et al., "Where Are All the Good Jobs Going? What National and Local Job Quality and Dynamics Mean for U.S. Workers," Russell Sage Foundation, 2011; Arne Kalleberg, "Good Jobs, Bad Jobs: The Rise of Polarized and Precarious Employment Systems in the United States 1970s to 2000s," Russell Sage Foundation, 2013. See Holzer et al. for a discussion of job quality and recent trends in this area. Kalleberg also discusses job quality as a function of pay, work conditions, and access to health and retirement benefits.

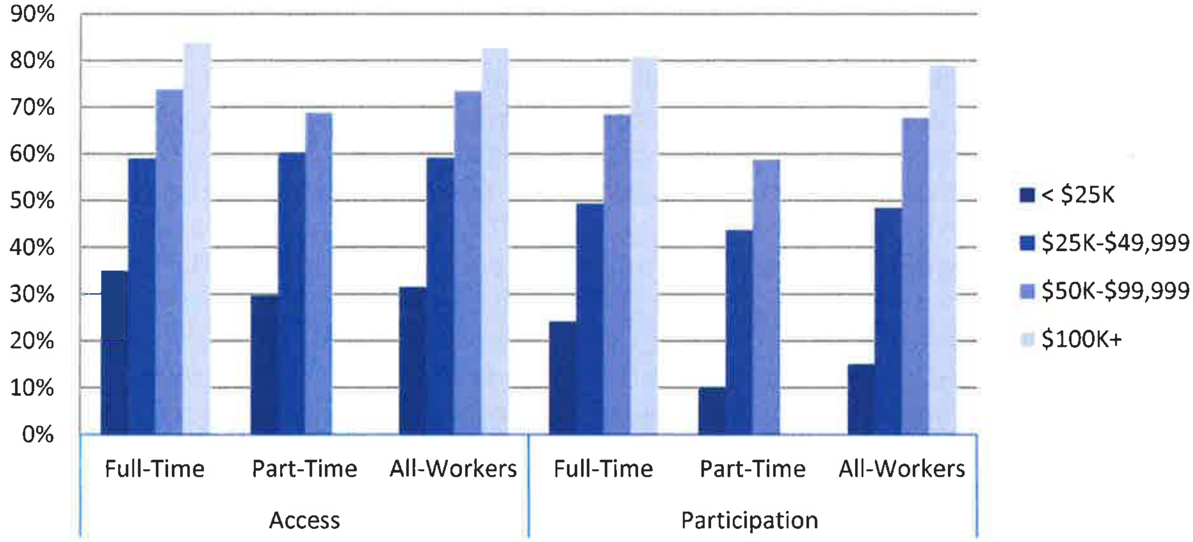
[11] Congressional Budget Office, "The Distribution of Major Tax Expenditures in the Individual Income Tax System," accessed Sept. 16, 2015, https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/43768_DistributionTaxExpenditures.pdf. Higher average wages in a business may make offering a retirement plan and other benefits more attractive, in part because the associated tax incentives are generally larger for higher earners.

[12] The Pew Charitable Trusts, "Survey of American Family Finances, Top-Lines Accompanying 'Americans' Financial Security: Perception and Reality,' " 2015, 4, http://www.pewtrusts.org/~/media/assets/2015/03/fsm-poll-results-toplines_artfinal_v3.pdf.

[13] The Pew Charitable Trusts, "The Precarious State of Family Balance Sheets," 3.

[14] Low lifetime earners also may require less in savings to maintain their pre-retirement standard of living because of Social Security's progressive benefit formula.

Figure 4: Retirement Plan Access and Participation in Virginia by Household Income



Note: The top income group is excluded for part-time workers due to low sample size.

Education:

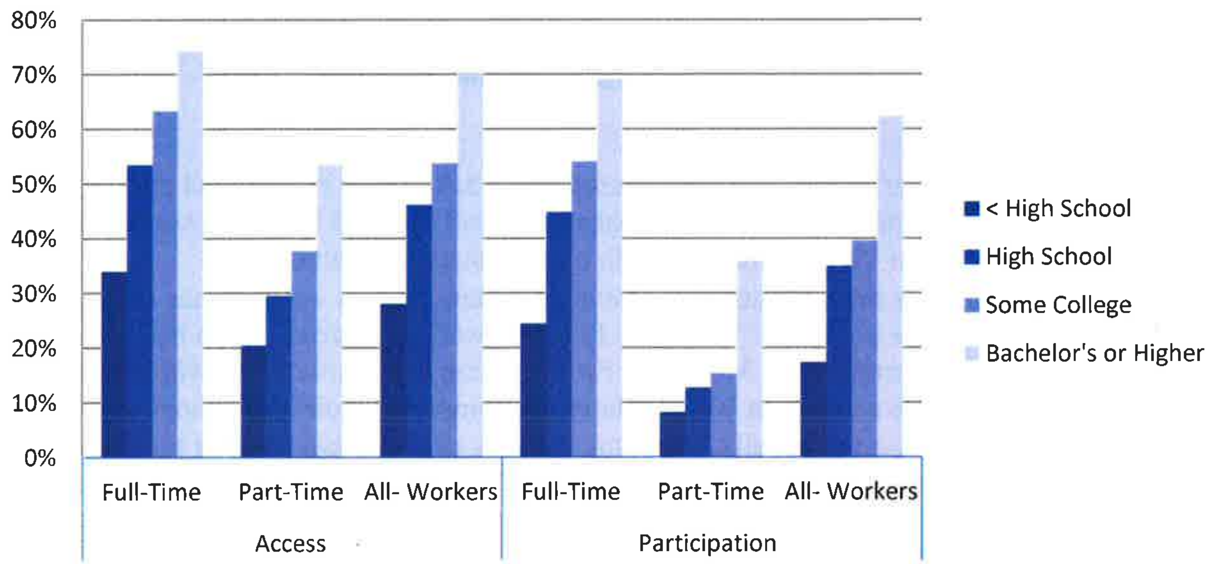
- Workers with lower educational attainment tend to have lower rates of and participation than those with higher rates of educational attainment. Figure 5 below shows how access and participation in Virginia increase with higher educational attainment.
- Virginia has higher rates of educational attainment amongst its workers than the U.S. overall. Thirty-nine percent of Virginia's full-time workers have at least a bachelor's degree or higher compared to 34 percent for the nation as a whole. Meanwhile, only 7 percent of full-time workers in Virginia have not completed their high school degree, compared to 8 percent nationally. Part-time workers similarly have higher rates of educational attainment. Part-time workers in Virginia with at least a Bachelor's make up 23 percent of part-time workers state-wide compared to 20 percent nationally.
- Education can affect retirement plan access and participation in multiple ways. Education typically contributes to economic outcomes such as better job quality and higher income. For example, the median lifetime earnings for workers with a high school diploma are about $1 million less than for workers with a bachelor's degree.[15] And having limited economic resources can make saving for retirement more difficult. Education influences where an individual can find work, as well as the type of industry and occupation.[16]

[15] Anthony P. Carnevale, Stephen J. Rose, and Ban Cheah, "The College Payoff: Education, Occupations, Lifetime Earnings," Georgetown University Center on Education and the Workforce (2014), accessed Sept. 16, 2015, https://cew.georgetown.edu/wp-content/uploads/2014/11/collegepayoff-complete.pdf. Note that the differences in lifetime earnings cannot be wholly attributed to the degree itself and may in part reflect the underlying capabilities and characteristics of those individuals obtaining additional formal education.

[16] BLS, "Educational Attainment for Workers 25 Years and Older by Detailed Occupation," last modified Dec. 19, 2013, http://www.bls.gov/emp/ep_table_111.htm.

- Education also ties into financial literacy and the willingness to join a retirement plan.[17] For example, those with higher levels of education or within certain disciplines, such as mathematics or economics, could be more comfortable with savings concepts and the benefits of participation.[18] More broadly, many workers may not have a basic understanding of how to prepare for retirement. According to the 2012 Financial Capability Survey conducted by the Financial Industry Regulatory Authority, only 37 percent of respondents had ever attempted to calculate their retirement savings needs. Among those who did not complete high school, the share was just 15 percent.
- A similar proportion of Virginia's part-time workers with at least a bachelor's degree have access to a workplace retirement plan as full-time workers with just a high school diploma. Consistent with the overall differences between full- and part-time workers described above, this same group of part-time workers with at least a bachelor's degree participates at lower rates than full-time workers with a high school diploma.

Figure 5: Retirement Plan Access and Participation in Virginia by Education



[17] Annamaria Lusardi and Olivia S. Mitchell, "How Ordinary Consumers Make Complex Economic Decisions: Financial Literacy and Retirement Readiness," National Bureau of Economic Research, Working Paper No. 15350 (2009), http://www.nber.org/papers/w15350.pdf; Julie R. Agnew et al., "Do Financial Literacy and Mistrust Affect 401(k) Participation?," Center for Retirement Research at Boston College Brief, 7–17 (2007), http://crr.bc.edu/wp-content/uploads/2007/11/IB_7-17.pdf.

[18] Annamaria Lusardi and Olivia S. Mitchell, "Baby Boomer Retirement Security: The Roles of Planning, Financial Literacy, and Housing Wealth," National Bureau of Economic Research, Working Paper No. 12585 (2006), http://www.nber.org/papers/w12585.pdf. Previous research has shown that, compared with less educated groups, older workers with a bachelor's degree or higher are more likely to be able to correctly answer various financial literacy questions, such as how to calculate compound interest, which is a key concept in understanding the benefits of long-term savings.

Race and ethnicity:

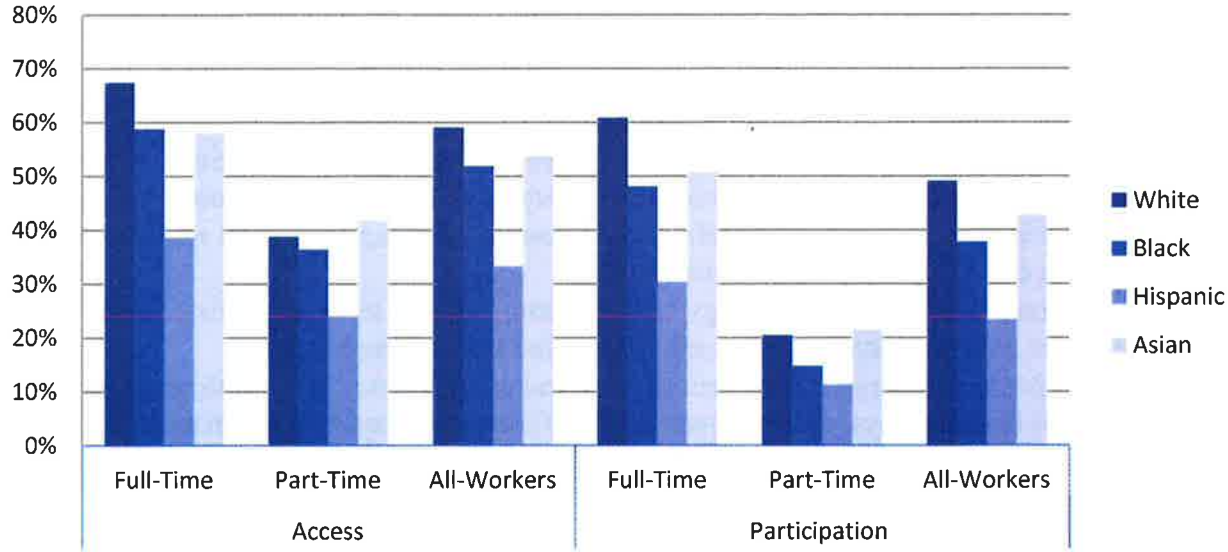
- Hispanic, black, and Asian employees tend to have lower rates of access to, and participation in, retirement plans than white employees, as shown in Figure 6 below.
- Virginia has substantially more blacks and fewer Hispanics than the U.S. overall. In Virginia, 17 percent of full-time and 18 percent of part-time workers are black. Nationally, only 10 percent of full-time workers and 11 percent of part-time workers identify as black. Hispanics make up only 8 percent of full-time and 9 percent of part-time workers in Virginia. Across the U.S. Hispanics make up 16 percent of full-time workers and 17 percent of part-time workers.
- In the context of retirement savings, race and ethnicity can serve as a proxy for economic variables such as income, wealth, job type, or industry of employment.
- In addition to economic considerations, race and ethnicity may affect retirement savings behavior in other ways, such as lower levels of trust and comfort with financial institutions and the investment process in general. For example, a 2008 survey of investors found that black households show substantial interest in steps to boost confidence and education in money matters, such as employer-based one-on-one consultations with financial advisers.[19] A greater percentage of black than white households said this type of outreach would encourage them to increase investments in defined contribution plans.[20] In addition to a lack of trust in financial institutions, Hispanics have noted factors such as language barriers and problems using nontraditional forms of identification as reasons for staying away from mainstream financial services.[21]

[19] Ariel Investments LLC/The Charles Schwab Corp., "The Ariel/Schwab Black Investor Survey: Saving and Investing Among Higher Income African-American and White Americans," 2008, accessed Sept. 16, 2015, https://www.arielinvestments.com/landmark-surveys/.

[20] Tristan Mabry, "Black Investors Lack Trust in Brokers, Shy Away From Investing in Stocks," *The Wall Street Journal*, May 14, 1999, http://www.wsj.com/articles/SB926636527156960101; U.S. Department of Labor, "Disparities for Women and Minorities in Retirement Savings," 2010, accessed Sept. 16, 2015, http://www.dol.gov/ebsa/publications/2010ACreport3.html. Other research suggests that historically based trust and comfort issues are an ongoing concern for certain minority populations. In addition, Agnew et al. (2007) find that mistrust is a negative, significant predictor on 401(k) plan participation in an automatic enrollment plan structure but is not significant in a voluntary program (Julie R. Agnew et al., "Do Financial Literacy and Mistrust Affect 401(k) Participation?"). The Federal Deposit Insurance Corp. reported that approximately one-third of those without a bank account reported distrust in or dislike of banks as one reason they were unbanked. (See "2013 FDIC National Survey of Unbanked and Underbanked Households," 2014, https://www.fdic.gov/householdsurvey/2013report.pdf.)

[21] FDIC, "2013 FDIC National Survey of Unbanked and Underbanked Households," 2014, https://www.fdic.gov/householdsurvey/2013report.pdf; National Council of La Raza, "Banking in Color: New Findings on Financial Access for Low-and-Moderate Income Communities," 2014, http://publications.nclr.org/bitstream/handle/123456789/1203/bankingincolor_web.pdf?sequence=1&isAllowed=y.

Figure 6: Retirement Plan Access and Participation in Virginia by Race and Ethnicity



Age:

- Relatively older workers tend to have greater rates of access and participation than relatively younger workers.
- Part-time workers of all ages have similar levels of access to employer-based retirement plans.
- As workers age, a greater proportion participate in employer-based retirement plans, regardless of whether they are full or part-time.
- Age can be a factor in retirement savings in multiple ways. One is the ability to save. On average, younger workers have less income than older ones; saving for retirement might not be reasonable or rational from a life cycle perspective.[22] Debt also may be a concern. Although the share of younger households—those younger than 35—holding debt is lower than that among many older age groups, these households have the highest median dollar amount of unsecured debt.[23] Because this debt is likely to have higher interest rates than for many other forms of debt, paying it off before saving for retirement might be the best path for some workers. Research from Pew suggests that education debt is a particular concern for millennials: 41 percent of this age group holds this type of debt, and the median amount owed is $20,000.[24] Debt could reduce demand for retirement plans among young workers and curtail participation even when offered.

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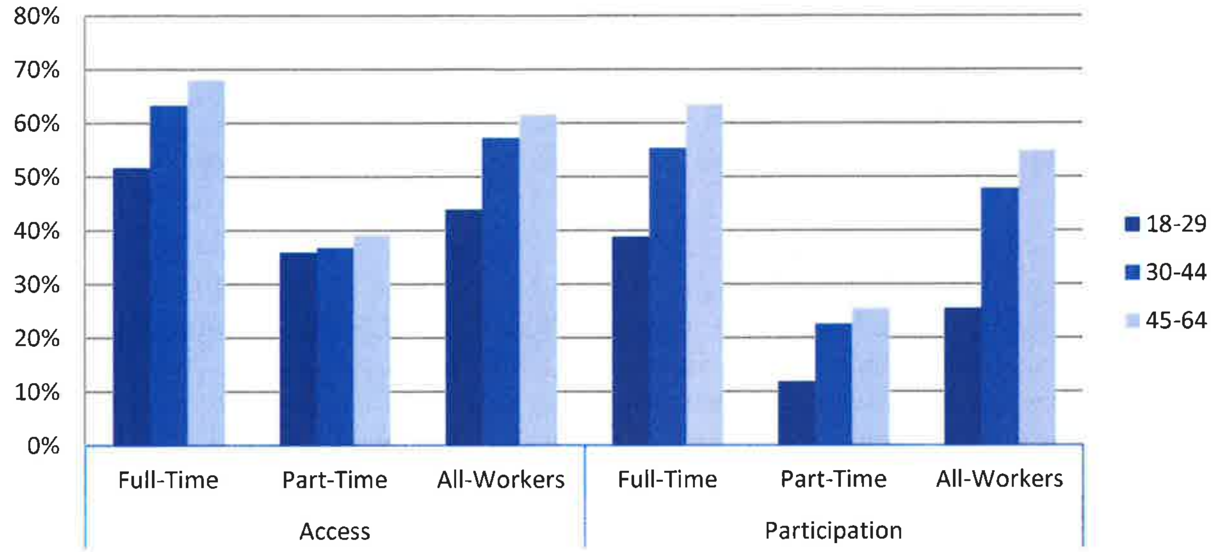
[22] Scott A. Wolla, "Smoothing the Path: Balancing Debt, Income, and Saving for the Future," Federal Reserve Bank of St. Louis Page One Economics Newsletter (November 2014): 1–5, https://research.stlouisfed.org/pageone-economics/uploads/newsletter/2014/PageOne1114NEW.pdf; Barry Bosworth, Gary T. Burtless, and C. Eugene Steuerle, "Lifetime Earnings Patterns, The Distribution of Future Social Security Benefits, and the Impact of Pension Reform," Center for Retirement Research at Boston College, http://www.urban.org/research/publication/lifetime-earnings-patterns-distribution-future-social-security-benefits-and-impact-pension-reform/view/full_report.

[23] U.S. Census Bureau, Marina Vornovytskyy, Alfred Gottschalck, and Adam Smith, "Household Debt in the U.S.: 2000 to 2011," 2013, https://www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf.

[24] The Pew Charitable Trusts, "The Complex Story of American Debt," 2015, 3, http://www.pewtrusts.org/~/media/Assets/2015/07/Reach-of-Debt-Report_ARTFINAL.pdf.

- Younger workers also might have different saving priorities.[25] For example, some may be more interested in saving for a house, financing education, or building personal liquidity. Data from the 2013 Survey of Consumer Finances show that among households that reported saving during the past year, the percentage that listed retirement as their top savings goal was far lower among households headed by an individual under age 35 than among older households.[26] Older workers with more wealth and income and a clearer focus on retirement might be expected to more frequently seek employment at a firm with a retirement plan and participate when given the opportunity.

Figure 7: Retirement Plan Access and Participation in Virginia by Age



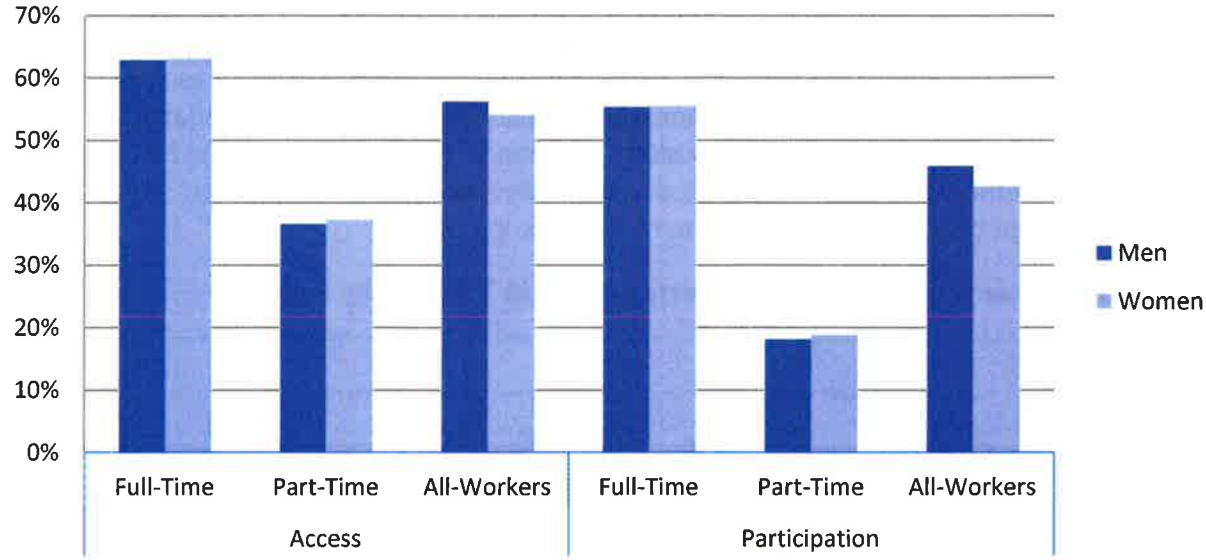
Gender:

- Women and men tend to have very similar rates of access and participation over all. Both women and men regardless of work status have an access rate of 63 percent, as shown in Figure 8.
- Virginia's workers have a similar gender distribution as the U.S overall.
- While women have similar if not higher rates of access and participation amongst both full- and part-time workers. However, because a higher proportion of women are employed part-time, and part-time workers tend to have less access to employer-sponsored retirement plan options (37%) than full-time workers (63%), women have lower overall access and participation when looking at all workers.

[25] Alicia H. Munnell, Annika Sunden, and Catherine Taylor, "What Determines 401(k) Participation and Contributions?" *Social Security Bulletin* 64, no. 3 (2001/2002): 64–75, http://ssa.gov/policy/docs/ssb/v64n3/v64n3p64.pdf.

[26] The authors' analysis used the Survey Documentation and Analysis (SDA) online tool, available at http://www.federalreserve.gov/econresdata/scf/scfindex.htm; see Jing J. Xiao, "Saving Motives and 401(k) Contributions," *Financial Counseling and Planning* 8, no. 2 (1997) for more detail on savings motives and behavior, https://afcpe.org/assets/pdf/vol828.pdf.

Figure 8: Retirement Plan Access and Participation in Virginia by Gender



Notes on the Data: Figures reported are based on a pooled version of the 2010-2014 Minnesota Population Center's Integrated Public Use Microdata Series (IPUMS) Current Population Survey (CPS), Annual Social Economic (ASEC) Supplement.[27] Unless otherwise noted, "worker" means a private sector wage and salary worker between the ages of 18-64.[28] Workers are identified as full-time, full-year if they usually work at least 35 hours a week and they worked 50 or more weeks in the previous year. Part-time workers are those who either work less than 35 hours a week or those who worked less than 50 weeks in the previous year.

We thank the Commonwealth of Virginia for the opportunity to comment on this important study. We look forward to next steps in this process and continuing to share our work with the study group. We are available to discuss these comments or any other aspect of our research.

Sincerely,

John C. Scott
Director
Retirement Savings Project

[27] Miriam King, Steven Ruggles, J. Trent Alexander, Sarah Flood, Katie Genadek, Matthew B. Schroeder, Brandon Trampe, and Rebecca Vick. Integrated Public Use Microdata Series, Current Population Survey: Version 4.0. [Machine-readable database]. Minneapolis, MN: Minnesota Population Center, 2015.

[28] The CPS ASEC Supplement is conducted jointly by the U.S. Census Bureau and the Bureau of Labor Statistics and asks questions about access to employer or union sponsored retirement and pension plans, and participation in these plans. Note that the CPS ASEC does not specifically ask respondents to identify whether or not they were eligible to participate for a plan their employer provided. For the purpose of this analysis, those who work for an employer who provides a plan are considered to have access to a retirement plan, regardless of whether or not they were eligible to participate in this plan. Also readers should be aware that the CPS ASEC data on pension access and participation is self-reported. Previous work suggests that survey respondents tend to underreport retirement plan access and participation (Dushi, Iams, and Lichtenstein, 2011, Munnell and Bleckman, 2014).

<u>Appendix E – DOL Final Regulations</u>

■ 108. Section 27.222 is added to read as follows:

§ 27.222 Importation of denatured spirits and fuel alcohol.

Denatured spirits and fuel alcohol are treated as spirits for purposes of this part and are subject to tax pursuant to § 27.40(a). The tax must be paid upon importation, with only two exceptions: Spirits may be withdrawn from customs custody free of tax for the use of the United States under subpart M of this part; and spirits may be withdrawn from customs custody and transferred to a distilled spirits plant, including a bonded alcohol fuel plant, without payment of tax under subpart L of this part. After transfer pursuant to subpart L, denatured spirits or fuel alcohol may be withdrawn free of tax in accordance with part 19 of this chapter if they meet the standards to conform either to a denatured spirits formula specified in part 21 of this chapter (for withdrawal from a regular distilled spirits plant) or a formula specified in § 19.746 of this chapter (for withdrawal from an alcohol fuel plant). Such withdrawal is permitted, even though the denaturation or rendering unfit for beverage use may have occurred, in whole or in part, in a foreign country. For purposes of this chapter, the denaturation or rendering unfit is deemed to have occurred at the distilled spirits plant (including the alcohol fuel plant), the proprietor of which is responsible for compliance with part 21 or § 19.746, as the case may be. Imported fuel alcohol shall also conform to the requirements of 27 CFR 19.742.

PART 28—EXPORTATION OF LIQUORS

■ 109. The authority citation for part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5121, 5122, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205, 44 U.S.C. 3504(h).

■ 110. Section 28.157 is added to read as follows:

§ 28.157 Exportation by dealer in specially denatured spirits.

A dealer in specially denatured spirits who holds a permit under part 20 of this chapter may export specially denatured spirits in accordance with § 20.183 of this chapter.

Signed: July 6, 2016.

John J. Manfreda,

Administrator.

Approved: July 7, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–20712 Filed 8–29–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB71

Savings Arrangements Established by States for Non-Governmental Employees

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document describes circumstances in which state payroll deduction savings programs with automatic enrollment would not give rise to the establishment of employee pension benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA). This document provides guidance for states in designing such programs so as to reduce the risk of ERISA preemption of the relevant state laws. This document also provides guidance to private-sector employers that may be covered by such state laws. This rule affects individuals and employers subject to such state laws.

DATES: This rule is effective October 31, 2016.

FOR FURTHER INFORMATION CONTACT: Janet Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Approximately 39 million employees in the United States do not have access to a retirement savings plan through their employers.[1] Even though such employees could set up and contribute to their own individual retirement accounts or annuities (IRAs), the great majority do not save for retirement. In fact, less than 10 percent of all workers contribute to a plan outside of work.[2]

For older Americans, inadequate retirement savings can mean sacrificing or skimping on food, housing, health care, transportation, and other necessities. In addition, inadequate retirement savings places greater stress on state and federal social welfare programs as guaranteed sources of income and economic security for older Americans. Accordingly, states have a substantial governmental interest to encourage retirement savings in order to protect the economic security of their residents.[3] Concern over the low rate of saving among American workers and the lack of access to workplace plans for many of those workers has led some state governments to expand access to savings programs for their residents and other individuals employed in their jurisdictions by creating their own programs and requiring employer participation.[4]

A. State Payroll Deduction Savings Initiatives

One approach some states have taken is to establish state payroll deduction savings programs. Through automatic enrollment such programs encourage employees to establish tax-favored IRAs funded by payroll deductions.[5] California, Connecticut, Illinois, Maryland, and Oregon, for example, have adopted laws along these lines.[6] These initiatives generally require certain employers that do not offer workplace savings arrangements to

[1] National Compensation Survey, Bureau of Labor Statistics (July 2016), Employee Benefits in the United States—March 2016 (*http://www.bls.gov/news.release/pdf/ebs2.pdf*). These data show that 66 percent of 114 million private-sector workers have access to a retirement plan through work. Therefore, 34 percent of 114 million private-sector workers (39 million) do not have access to a retirement plan through work.

[2] *See* The Pew Charitable Trust, ''How States Are Working to Address The Retirement Savings Challenge,'' (June 2016) (*http://www.pewtrusts.org/~/media/assets/2016/06/howstatesareworkingtoaddresstheretirementsavingschallenge.pdf).*

[3] *See* Christian E. Weller, Ph.D., Nari Rhee, Ph.D., and Carolyn Arcand, ''Financial Security Scorecard: A State-by-State Analysis of Economic Pressures Facing Future Retirees,'' National Institute on Retirement Security (March 2014) (*www.nirsonline.org/index.php?option=com_content&task=view&id=830&Itemid=48*).

[4] *See, e.g.,* Kathleen Kennedy Townsend, Chair, Report of the Governor's Task Force to Ensure Retirement Security for All Marylanders, ''1,000,000 of Our Neighbors at Risk: Improving Retirement Security for Marylanders'' (2015).

[5] These could include individual retirement accounts described in 26 U.S.C. 408(a), individual retirement annuities described in 26 U.S.C. 408(b), and Roth IRAs described in 26 U.S.C. 408A.

[6] California Secure Choice Retirement Savings Trust Act, Cal. Gov't Code §§ 100000–100044 (2012); Connecticut Retirement Security Program Act, P.A. 16–29 (2016); Illinois Secure Choice Savings Program Act, 820 Ill. Comp. Stat. 80/1–95 (2015); Maryland Small Business Retirement Savings Program Act, Ch. 324 (H.B. 1378)(2016); Oregon Retirement Savings Board Act, Ch. 557 (H.B. 2960)(2015).

automatically deduct a specified amount of wages from their employees' paychecks unless the employee affirmatively chooses not to participate in the program.[7] The employers are also required to remit the payroll deductions to state-administered IRAs established for the employees. These programs also allow employees to stop the payroll deductions at any time. The programs, as currently designed, do not require, provide for or permit employers to make matching or other contributions of their own into the employees' accounts. In addition, the state initiatives typically require that employers provide employees with information prepared or assembled by the program, including information on employees' rights and various program features.

B. ERISA's Regulation of Employee Benefit Plans

Section 3(2) of ERISA defines the terms ''employee pension benefit plan'' and ''pension plan'' broadly to mean, in relevant part ''[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program provides retirement income to employees. . . .''[8] The Department and the courts have broadly interpreted ''established or maintained'' to require only minimal involvement by an employer or employee organization.[9] An employer could, for example, establish an employee benefit plan simply by purchasing insurance products for individual employees. These expansive definitions are essential to ERISA's purpose of protecting plan participants by ensuring the security of promised benefits.

Due to the broad scope of ERISA coverage, some stakeholders have expressed concern that state payroll deduction savings programs, such as those enacted in California, Connecticut, Illinois, Maryland, and Oregon may cause covered employers to inadvertently establish ERISA-covered plans, despite the express intent of the states to avoid such a result. This uncertainty, together with ERISA's broad preemption of state laws that ''relate to'' private-sector employee pension benefit plans has created a serious impediment to wider adoption of state payroll deduction savings programs.[10]

C. 1975 IRA Payroll Deduction Safe Harbor

Although IRAs generally are not set up by employers or employee organizations, ERISA coverage may be triggered if an employer (or employee organization) does, in fact, ''establish or maintain'' an IRA arrangement for its employees. 29 U.S.C. 1002(2)(A).[11] In contexts not involving state payroll deduction savings programs, the Department has previously issued guidance to help employers determine whether their involvement in certain voluntary payroll deduction savings arrangements involving IRAs would result in the employers having established or maintained ERISA-covered plans. That guidance included a 1975 ''safe harbor'' regulation under 29 CFR 2510.3–2(d) setting forth circumstances under which IRAs funded by payroll deductions would not be treated as ERISA plans, and a 1999 Interpretive Bulletin clarifying that certain ministerial activities will not cause an employer to have established an ERISA plan simply by facilitating such payroll deduction savings arrangements.[12]

The 1975 regulation provides that certain IRA payroll deduction arrangements are not subject to ERISA if four conditions are met: (1) The employer makes no contributions; (2) employee participation is ''completely voluntary''; (3) the employer does not endorse the program and acts as a mere facilitator of a relationship between the IRA vendor and employees; and (4) the employer receives no consideration except for its own expenses.[13] In essence, if the employer merely allows a vendor to provide employees with information about an IRA product and then facilitates payroll deduction for employees who voluntarily initiate action to sign up for the vendor's IRA, the employer will not have established, and the arrangement will not be, an ERISA pension plan.

With regard to the 1975 IRA Payroll Deduction Safe Harbor's condition requiring that an employee's participation be ''completely voluntary,'' the Department intended this term to mean that the employee's enrollment in the program must be self-initiated. In other words, under the safe harbor, the decision to enroll in the program must be made by the employee, not the employer. If the employer automatically enrolls employees in a benefit program, the employees' participation would not be ''completely voluntary'' and the employer's actions would constitute the ''establishment'' of a pension plan, within the meaning of ERISA section 3(2). This is true even if the employee can affirmatively opt out of the program.[14] Thus, arrangements that allow employers to automatically enroll employees—as do all existing state payroll deduction savings programs—do not satisfy the condition in the safe harbor that the employees' participation be ''completely voluntary,'' even if the employees are permitted to ''opt out'' of the program. Consequently, such programs would fall outside the 1975 safe harbor and could be subject to ERISA.

[7] Workplace savings arrangements may include plans such as those qualified under or described in 26 U.S.C. 401(a), 401(k), 403(a), 403(b), 408(k) or 408(p), and may constitute either ERISA or non-ERISA arrangements.

[8] 29 U.S.C. 1002(2)(A). ERISA's Title I provisions ''shall apply to any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce.'' 29 U.S.C. 1003(a). Section 4(b) of ERISA includes express exemption from coverage under Title I for governmental plans, church plans, plans maintained solely to comply with applicable state laws regarding workers compensation, unemployment, or disability, certain foreign plans, and unfunded excess benefit plans. 29 U.S.C. 1003(b).

[9] *Donovan* v. *Dillingham,* 688 F.2d 1367 (11th Cir. 1982); *Harding* v. *Provident Life and Accident Ins. Co.,* 809 F. Supp. 2d 403, 415–419 (W.D. Pa. 2011); DOL Adv. Op. 94–22A (July 1, 1994).

[10] ERISA's preemption provision, section 514(a) of ERISA, 29 U.S.C. 1144(a), provides that the Act ''shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan'' covered by the statute. The U.S. Supreme Court has long held that ''[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.'' *Shaw* v. *Delta Air Lines, Inc.,* 463 U.S. 85, 96–97 (1983) (footnote omitted). In various decisions, the Court has concluded that ERISA preempts state 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.

[11] ERISA section 404(c)(2) (simple retirement accounts); 29 CFR 2510.3–2(d) (1975 IRA payroll deduction safe harbor); 29 CFR 2509.99–1 (interpretive bulletin on payroll deduction IRAs); *Cline* v. *The Industrial Maintenance Engineering & Contracting Co.,* 200 F.3d 1223, 1230–31 (9th Cir. 2000).

[12] *See* 29 CFR 2510.3–2(d); 40 FR 34526 (Aug. 15, 1975); 29 CFR 2509.99–1. The Department has also issued advisory opinions discussing the application of the safe harbor regulation to particular facts. *See, e.g.,* DOL Adv. Op. 82–67A (Dec. 21, 1982); DOL Adv. Op. 84–25A (June 18, 1984).

[13] 29 CFR 2510.3–2(d) (1975 IRA Payroll Deduction Safe Harbor).

[14] *See generally* Proposed rule on Savings Arrangements Established by States for Non-Governmental Employees, 80 FR 72006, 72008 (November 18, 2015) (The completely voluntary condition in the 1975 safe harbor is ''important because where the employer is acting on his or her own volition to provide the benefit program, the employer's actions—*e.g.,* requiring an automatic enrollment arrangement—would constitute its 'establishment' of a plan within the meaning of ERISA's text, and trigger ERISA's protections for the employees whose money is deposited into an IRA.'').

D. 2015 Proposed Regulation

At the 2015 White House Conference on Aging, the President directed the Department to publish guidance to support state efforts to promote broader access to workplace retirement savings opportunities for employees. On November 18, 2015, the Department published in the **Federal Register** a proposed regulation providing that for purposes of Title I of ERISA the terms ''employee pension benefit plan'' and ''pension plan'' do not include an IRA established and maintained pursuant to a state payroll deduction savings program if that program satisfies all of the conditions set forth in the proposed rule.[15] By articulating the types of state payroll deduction savings programs that would be exempt from ERISA, the proposal sought to create a safe harbor for the states and employers and thus remove uncertainty regarding Title I coverage of such state payroll deduction savings programs and the IRAs established and maintained pursuant to them. In the Department's view, courts would be less likely to find that statutes creating state programs in compliance with the proposed safe harbor are preempted by ERISA.

The proposal parallels the 1975 IRA Payroll Deduction Safe Harbor in that it requires the employer's involvement to be no more than ministerial. 29 CFR 2510.3–2(d).[16] In both contexts, limited employer involvement in the arrangement is the key to finding that the employer has not established or maintained an employee pension benefit plan. The proposal added the conditions that employer involvement must be required under state law, and that the state must establish and administer the program pursuant to state law. Significantly, and in recognition of the fact that several state initiatives provide for automatic enrollment and therefore would not satisfy the Department's 1975 IRA Payroll Deduction Safe Harbor condition that employee participation in such programs be ''completely voluntary,'' the proposal also adopted a new condition that employee participation be ''voluntary.'' Because the new safe harbor requires that the employer's involvement in the program be required and circumscribed by state law, the 1975 safe harbor's condition that employee participation be ''completely voluntary'' has been modified to permit state-required automatic employee enrollment procedures.

The Department received and analyzed approximately 70 public comments in response to the proposed rule. The Department is issuing a final rule that contains some changes and clarifications in response to questions raised in the public comments. Those changes are described herein.

II. Overview of Final Rule

The final rule largely adopts the proposal's general structure. Thus, new paragraph (h) of § 2510.3–2 continues to provide in the final rule that, for purposes of Title I of ERISA, the terms ''employee pension benefit plan'' and ''pension plan'' do not include an individual retirement plan (as defined in 26 U.S.C. 7701(a)(37))[17] established and maintained pursuant to a state payroll deduction savings program if the program satisfies all of the conditions set forth in paragraphs (h)(1)(i) through (xi) of the regulation. Thus, if these conditions are satisfied, neither the state nor the employer is establishing or maintaining a pension plan subject to Title I of ERISA.

Most of the new safe harbor's conditions focus on the state's role in the program. The program must be specifically established pursuant to state law. 29 CFR 2510.3–2(h)(1)(i). The program is implemented and administered by the state that established the program. 29 CFR 2510.3–2(h)(1)(ii). The state must be responsible for investing the employee savings or for selecting investment alternatives from which employees may choose. *Id.* The state must be responsible for the security of payroll deductions and employee savings. 29 CFR 2510.3–2(h)(1)(iii). The state must adopt measures to ensure that employees are notified of their rights under the program, and must create a mechanism for enforcing those rights. 29 CFR 2510.3–2(h)(1)(iv). The state may implement and administer the program through its governmental agency or instrumentality. 29 CFR 2510.3–2(h)(1)(ii). The state or its governmental agency or instrumentality may also contract with others to operate and administer the program. 29 CFR 2510.3–2(h)(2)(ii).

Many of the rule's conditions limit the employer's role in the program. The employer's activities must be limited to ministerial activities such as collecting payroll deductions and remitting them to the program. 29 CFR 2510.3–2(h)(1)(vii)(A). The employer may provide notice to the employees and maintain records of the payroll deductions and remittance of payments. 29 CFR 2510.3–2(h)(1)(vii)(B). The employer may provide information to the state necessary for the operation of the program. 29 CFR 2510.3–2(h)(1)(vii)(C). The employer may distribute program information from the state program to employees. 29 CFR 2510.3–2(h)(1)(vii)(D). Employers cannot contribute employer funds to the IRAs. 29 CFR 2510.3–2(h)(1)(viii). Employer participation in the program must be required by state law. 29 CFR 2510.3–2(h)(1)(ix).

Other critical conditions focus on employee rights. For example, employee participation in the program must be voluntary. 29 CFR 2510.3–2(h)(1)(v). Thus, if the program requires automatic enrollment, employees must be given adequate advance notice and have the right to opt out. 29 CFR 2510.3–2(h)(2)(iii). In addition, employees must be notified of their rights under the program, including the mechanism for enforcement of those rights. 29 CFR 2510.3–2(h)(1)(iv).

III. Changes to Proposal Based on Public Comment

A. Ability To Experiment

The final rule contains new regulatory text in paragraph (a) of § 2510.3–2 making it clear that the rule's conditions on state payroll deduction savings programs simply create a safe harbor. A safe harbor approach to these arrangements provides to states clear guide posts and certainty, yet does not by its terms prohibit states from taking additional or different action or from experimenting with other programs or arrangements. Although the Department expressed this view in the proposal's preamble, commenters requested that this safe harbor position be explicitly incorporated into the operative text, just as the Department did previously under § 2510.3–1 with respect to certain practices excluded from the definition of ''welfare plan.''[18] The Department

[15] 80 FR 72006 (November 18, 2015). On the same day that the NPRM was published, the Department also published an interpretive bulletin (IB) explaining the Department's views concerning the application of ERISA to certain state laws designed to expand retirement savings options for private-sector workers through ERISA-covered retirement plans. 80 FR 71936 (codified at 29 CFR 2509.2015–02). A number of commenters on the NPRM discussed ERISA preemption and other issues that the commenters perceived as raised by the analysis and conclusions in the IB. Comments on the IB are beyond the scope of this regulation and are not discussed in this document.

[16] The Department has issued similar safe harbor regulations for group and group-type insurance arrangements, 29 CFR 2510.3–1(j) and for tax sheltered annuities, 29 CFR 2510.3–2(f).

[17] The term ''individual retirement plan'' includes both traditional IRAs (individual retirement accounts described in section 408(a) and individual retirement annuities described in section 408(b) of the Code) and Roth IRAs under section 408A of the Code.

[18] *See* Comment Letter # 58 (Joint Submission from Service Employee International Union,

agrees that the final regulation would be improved by adding regulatory text explicitly recognizing that the regulation is a safe harbor. Adding such regulatory text clarifies the Department's intent and conforms this section with § 2510.3–1 (relating to welfare plans).

Accordingly, the final rule revises paragraph (a) of § 2510.3–2 by deleting some outdated text and adding the following sentence: ''The safe harbors in this section should not be read as implicitly indicating the Department's views on the possible scope of section 3(2).'' By adding this sentence to paragraph (a) of § 2510.3–2, the sentence then modifies all plans, funds and programs subsequently listed and discussed in paragraphs (b) through (h) of § 2510.3–2.[19] In different contexts in the past, the Department has stated its view that various of the programs listed in paragraphs (b) through (g) of § 2510.3–2 are safe harbors and do not preclude the possibility that plans, funds, and programs not meeting the relevant conditions in the regulation might also not be pension plans within the meaning of ERISA. Thus, this revision to paragraph (a) merely clarifies this view in operative text for these other programs.

B. Ability To Choose Investments and Control Leakage

The final rule removes the condition from paragraph (h)(1)(vi) of the proposal that would have prohibited states from imposing any restrictions, direct or indirect, on employee withdrawals from their IRAs. The proposal provided that a state program must not ''require that an employee or beneficiary retain any portion of contributions or earnings in his or her IRA and does not otherwise impose any restrictions on withdrawals or impose any cost or penalty on transfers or rollovers permitted under the Internal Revenue Code.'' The purpose of this prohibition, as explained in the proposal's preamble, was to make sure that employees would have meaningful control over the assets in their IRAs.[20]

The first reason commenters gave for removing this condition was that it would interfere with the states' ability to guard against ''leakage'' (*i.e.,* the use of long-term savings for short-term purposes). Absent such prohibition, states might seek to prevent leakage by, for example, requiring workers to wait until a specified age (*e.g.,* age 55 or 60) before they have access to their money, subject to an exception for ''hardship withdrawals.'' Since the states deal directly with the effects of geriatric poverty, they have a substantial interest in controlling leakage, and the proposal's prohibition against withdrawal restrictions could undermine that interest.[21]

The commenters' second reason for removal was that the proposal's prohibition would interfere with the states' ability to design programs with diversified investment strategies, including investment options where immediate liquidity is not possible, but where participants may see better performance with lower costs. For instance, some state payroll deduction savings programs may wish to use default or alternative investment options that include partially or fully guaranteed returns but do not provide immediate liquidity. In addition, some state payroll deduction savings programs may wish to pool and manage default investments using strategies and investments similar to those for defined benefit plans covering state employees, which typically include lock ups and restrictions ranging from months to years. The commenters assert that these long-term investments tend to provide greater returns than similar investments with complete liquidity (such as daily-valued mutual or bank funds), but would not have been permitted under the proposal's prohibition.

The third reason given by commenters was that the proposal's prohibition would interfere with the states' ability to offer lifetime income options, such as annuities. One consumer organization commented, for instance, that the proposed prohibition ''may have the effect of preventing states from requiring an annuity payout (or even permitting an annuity payout option). . . .''[22] Another commenter stated, ''as drafted, the withdrawal restriction can be read to apply at the investment-product level, which could impede an arrangement's ability to offer an investment that includes lifetime income features. Absence of immediate liquidity is an actuarially necessary element for many products that guarantee income for life, and there is no policy basis for excluding investment options that incorporate such features.''[23]

The fourth reason given for removal was that the proposal's prohibition was not relevant to determining under ERISA section 3(2) whether the state program, including employer behavior thereunder, constitutes ''establishment or maintenance'' of an employee benefit plan; or the Department's stated goal of crafting conditions that would limit employer involvement.

The Department agrees in many respects with these arguments and has removed this prohibition from the final regulation. Although the Department included this prohibition in the proposal to make sure that employees would have meaningful control over the assets in their IRAs, the Department has concluded that determinations regarding the necessity for such a prohibition are better left to the states. Based on established principles of federalism, it is more appropriately the role of the states, and not the Department, to determine what constitutes meaningful control of IRA assets in this non-ERISA context, subject to any federal law under the Department's jurisdiction—in this case, the prohibited transaction provisions in section 4975 of the Internal Revenue Code (Code)—applicable to IRAs.

C. Ability To Use Tax Incentives or Credits

The final rule modifies the condition in the proposal that would have prohibited employers from receiving more than their actual costs of complying with state payroll deduction savings programs. The proposal provided that employers may not receive any ''direct or indirect consideration in the form of cash or otherwise, other than the reimbursement of actual costs of the program to the employer. . . .'' The purpose of this provision was to allow employers to recoup actual costs of complying with the state law, but

National Education Association, American Federation of Teachers, American Federation of State County and Municipal Employees, and National Conference on Public Employee Retirement Systems) (''Although the preamble to the Proposed Rule clearly states that it is providing an additional 'safe harbor' that defined an arrangement that is not subject to ERISA coverage, that statement does not appear within the body of the regulation itself. It would be helpful to those states that may wish to experiment by adopting programs that are not specifically and clearly covered by the safe harbor but that are consistent with its meaning and intent if the [final rule] were to include such a statement.'').

[19] The plans, funds, and programs described in 29 CFR 2510.3–2 are severance pay plans (*see* paragraph (b)), bonus programs (*see* paragraph (c)), 1975 IRA payroll deduction (*see* paragraph (d)), gratuitous payments to pre-ERISA retirees (*see* paragraph (e)), tax sheltered annuities (*see* paragraph (f)), supplemental payment plans (*see* paragraph (g)) and certain state savings programs (*see* new paragraph (h)).

[20] 80 FR 72006, 72010 (Nov. 18, 2015).

[21] *See* Comment Letter # 39 (AARP) (''Increasingly, states are realizing that if retired individuals do not have adequate income, they are likely to be a burden on state resources for housing, food, and medical care. For example, according to a recent Utah study, the total cost to taxpayers for new retirees in that state will top $3.7 billion over the next 15 years.'').

[22] Comment Letter # 65 (Pension Rights Center).

[23] Comment Letter # 44 (TIAA–CREF).

nothing in excess of that amount, in order to avoid economic incentives that might effectively discourage sponsorship of ERISA plans in the future.

Several commenters urged the Department to moderate that proposal's prohibition and grant the states more flexibility to determine the most effective ways to compensate employers for their role in the state program. The majority of commenters on this issue indicated that states should be able to reward employer behavior with tax incentives or credits.[24] The states themselves who commented believe it should be within their discretion whether to provide support to employers that participate in the state program, and to determine the type and amount of that support, particularly where participation in the state program is required by the state.[25] Many commenters also pointed out that it would be very difficult if, as the proposal required, the state had to determine actual cost for every individual employer before providing a reimbursement.[26] One commenter, for example, stated ''it may be exceedingly difficult if not impossible for states to accurately calculate the 'actual cost' accrued by each participating employer, and it may be impractical for the amount of each tax credit to vary by employer.''[27] The commenters generally recommended that the rule clearly establish that states are able to use tax incentives or credits, whether or not such incentives or credits vary in amount by employer or represent actual costs.

The Department does not intend that cost reimbursement be difficult or impractical for states to implement. Accordingly, paragraph (h)(1)(xi) of the final rule does not require employers' actual costs to be calculated. Instead, it provides that the maximum consideration the state may provide to an employer is limited to a reasonable approximation of the employer's costs (or a typical employer's costs) under the program. This would allow the state to provide consideration in a flat amount based on a typical employer's costs or in different amounts based on an estimate of an employer's expenses. This standard accommodates the commenters' request for flexibility and confirms that states may use tax incentives or credits, without regard to whether such incentives or credits equal the actual costs of the program to the employer. In order to remain within the safe harbor under this approach, however, states must ensure that their economic incentives are narrowly tailored to reimbursing employers for their costs under the payroll deduction savings programs. States may not provide rewards for employers that incentivize them to participate in state programs in lieu of establishing employee pension benefit plans.

D. Ability To Focus on Employers That Do Not Offer Savings Arrangements

The final rule modifies paragraph (h)(2)(i) of the proposal, which stated that a state program meeting the regulation's conditions would not fail to qualify for the safe harbor merely because the program is ''directed toward those employees who are not already eligible for some other workplace savings arrangement.'' Even though this refers to a provision (directing the program toward such employees) that is not a requirement or condition of the safe harbor but is only an example of a feature that states may incorporate when designing their automatic IRA programs, some commenters maintained that this language in paragraph (h)(2)(i) could encourage states to focus on whether particular employees of an employer are eligible to participate in a workplace savings arrangement. They maintained that such a focus could be overly burdensome for certain employers because they may have to monitor their obligations on an employee-by-employee basis, with some employees being enrolled in the state program, some in the workplace savings arrangement, and others migrating between the two arrangements. Such burden, they maintained, could also give employers an incentive not to offer a retirement plan for their employees. The Department sees merit in these comments and also understands that the relevant laws enacted thus far by the states have been directed toward those employers that do not offer any workplace savings arrangement, rather than focusing on employees who are not eligible for such programs. Thus, the final rule provides that such a program would not fail to qualify for the safe harbor merely because it is ''directed toward those employers that do not offer some other workplace savings arrangement.'' This language will reduce employer involvement in determining employee eligibility for the state program, and it accurately reflects current state laws.

E. Ability of Governmental Agencies and Instrumentalities To Implement and Administer State Programs

The final rule clarifies the role of governmental agencies and instrumentalities in implementing and administering state programs. Some conditions in the proposal referred to ''State'' while other conditions referred to ''State . . . or . . . governmental agency or instrumentality of the State.'' This confused some commenters who wondered whether the Department intended to limit who could satisfy particular conditions by use of these different terms. The commenters pointed out that state legislation creating payroll deduction savings programs typically also creates boards to design, implement and administer such programs on a day-to-day basis and grants to these boards administrative rulemaking authority over the program. The commenters requested clarification on whether the state laws establishing the programs would have to specifically address every condition in the safe harbor, or whether such boards would be able to address any condition not expressly addressed in the legislation through their administrative rulemaking authority.

In response to these comments, the final regulation uses the phrase ''State (or governmental agency or instrumentality of the State)'' throughout to clarify that, so long as the program is specifically established pursuant to state law, a state program is eligible for the safe harbor even if the state law delegates a wide array of implementation and administrative authority (such as authority for rulemaking, contracting with third-party vendors, and investing) to a board, committee, department, authority, State Treasurer, office (such as Office of the Treasurer), or other similar governmental agency or instrumentality of the state. *See, e.g.,* § 2510.3–2(h)(1)(iii), (iv), (vi), (vii), (xi), and (h)(2)(ii). In addition, the phrase ''by a State'' was removed from paragraph (h)(1)(i) and the word ''implement'' was added to paragraph (h)(1)(ii) for further clarification. A conforming amendment also was made to paragraph (h)(2)(iii) to reflect the fact that state legislatures may delegate authority to set or change the state program's automatic contribution and escalation rates to a governmental agency or instrumentality of the state as noted above.

[24] *See, e.g.,* Comment Letter # 65 (Pension Rights Center).

[25] *See, e.g.,* Comment Letter # 54 (Oregon Retirement Savings Board). *See also* Comment Letter #37 (Maryland Commission on Retirement Security and Savings).

[26] *See, e.g.,* Comment Letter # 63 (Tax Alliance for Economic Mobility).

[27] Comment Letter # 56 (Aspen Institute Financial Security Program).

IV. Comments Not Requiring Changes to Proposal

A. Applicability of Prohibited Transaction Protections—Code § 4975

A number of commenters sought clarification on whether, and to what extent, the protections in the prohibited transaction provisions in section 4975 of the Code would apply to the state programs covered by the safe harbor. These commenters expressed concern regarding a perceived lack of federal consumer protections under the proposed safe harbor for state payroll deduction savings programs, because such safe harbor arrangements would be exempt from ERISA coverage (including all of ERISA's protective conditions).[28]

The safe harbor in the final rule is expressly conditioned on the states' use of IRAs, as defined in section 7701(a)(37) of the Code. 29 CFR 2510.3–2(h)(1). Such IRAs are subject to applicable provisions of the Code, including Code section 4975. Section 4975 of the Code includes prohibited transaction provisions very similar to those in ERISA, which protect participants and beneficiaries in ERISA plans by identifying and disallowing categories of conduct between plans and disqualified persons, as well as conduct involving fiduciary self-dealing. These prohibited transaction provisions are primarily enforced through imposition of excise taxes by the Internal Revenue Service.

Consequently, the final regulation protects employees from an array of transactions involving disqualified persons that could be harmful to employees' savings. For instance, absent an available prohibited transaction exemption,[29] the safe harbor effectively prohibits a sale or exchange, or leasing, of any property between an IRA and a disqualified person; the lending of money or other extension of credit between an IRA and a disqualified person; the furnishing of goods, services, or facilities between an IRA and a disqualified person; a transfer to, or use by or for the benefit of, a disqualified person of the income or assets of an IRA; any act by a disqualified person who is a fiduciary whereby he or she deals with the income or assets of an IRA in his or her own interest or for his or her own account; and any consideration for his or her own personal account by any disqualified person who is a fiduciary from any party dealing with the IRA in connection with a transaction involving the income or assets of the IRA. 26 U.S.C. 4975(c)(1)(A)–(F).

Section 4975 imposes a tax on each prohibited transaction to be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such). 26 U.S.C. 4975(a). The rate of the tax is equal to 15 percent of the amount involved for each prohibited transaction for each year in the taxable period. *Id.* If the transaction is not corrected within the taxable period, the rate of the tax may be equal to 100 percent of the amount involved. 26 U.S.C. 4975(b). The term ''disqualified person'' includes, among others, a fiduciary and a person providing services to an IRA.

With regard to commenters who asked how the prohibited transaction provisions in section 4975 of the Code would apply to the state programs covered by the safe harbor, the final rule does not adopt any special provisions for, or accord any special treatment or exemptions to, IRAs established and maintained pursuant to state payroll deduction savings programs. The prohibited transaction rules in section 4975 of the Code apply to, and protect, the assets of these IRAs in the same fashion, and to the same extent, that they apply to and protect the assets of any traditional IRA or tax-qualified retirement plan under Code section 401(a). To the extent persons operating and maintaining these programs are fiduciaries within the meaning of Code section 4975(e)(3), or provide services to an IRA, such persons are ''disqualified persons'' within the meaning of Code section 4975(e)(2)(A) and (B), respectively. Their status under these sections of the Code is controlling for prohibited transaction purposes, not their status or title under state law. Accordingly, section 4975 of the Code prohibits them from, among other things, dealing with assets of IRAs in a manner that benefits themselves or any persons in whom they have an interest that may affect their best judgment as fiduciaries. Thus, persons with authority to manage or administer these programs under state law should exercise caution when carrying out their duties, including for example selecting a program administrator or making investments or selecting an investment manager or managers, to avoid prohibited transactions. Whether any particular transaction would be prohibited is an inherently factual inquiry and would depend on the facts and circumstances of the particular situation.

State programs concerned about prohibited transactions may submit an individual exemption request to the Department. Any such request should be made in accordance with the Department's Prohibited Transaction Exemption Procedures (29 CFR part 2570). The Department may grant an exemption request if it finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries (and/or IRAs and of their owners), and protective of the rights of the participants and beneficiaries of such plans (and/or the owners of such IRAs).

B. Prescribing a Further Connection Between the State, Employers, and Employees

A number of commenters provided comments on whether the safe harbor should require some connection between the employers and employees covered by a state payroll deduction savings program and the state that establishes the program, and if so, what kind of connection. Some commenters favor limiting the safe harbor to state programs that cover only employees who are residents of the state and employed by an employer whose principal place of business also is within that state.[30] These commenters were focused primarily on burdens on small employers, particularly those operating near state lines with employees in multiple jurisdictions. Other commenters reject the idea that the Department's safe harbor should interfere with what is essentially a question of state law and prerogative. These commenters maintain that the extent to which a state can regulate employers is already established under existing legal principles.[31] The Department agrees with the latter commenters. The states are in the best position to determine the appropriate connection between employers and employees covered under the program and the states that establish such programs, and to know the limits on their ability to regulate extraterritorial

[28] Comment Letter # 29 (Securities Industry Financial Management Association); Comment Letter # 55 (U.S. Chamber of Commerce); Comment Letter # 62 (Investment Company Institute).

[29] *See* Code section 4975(d) (enumerating several statutory prohibited transaction exemptions); Code section 4975(c)(2) (authorizing Secretary of the Treasury to grant exemptions from the prohibited transaction provisions in Code section 4975) and Reorganization Plan No. 4 of 1978 (5 U.S.C. App. at 237 (2012) (generally transferring the authority of the Secretary of the Treasury to grant administrative exemptions under Code section 4975 to the Secretary of Labor).

[30] *See, e.g.,* Comment Letter #16 (Empower Retirement) and Comment Letter #31 (American Benefits Council).

[31] Comment Letter #11 (Connecticut Retirement Security Board) (''[T]he Department need not establish its own limitations, as the United States Constitution already places limits on the ability of states to regulate extraterritorial conduct.'' Citing *Healy* v. *Beer Inst., Inc.,* 491 U.S. 324, 336 (1989); *Allstate Ins. Co.* v. *Hague,* 449 U.S. 302, 310 (1981)).

conduct. Inasmuch as existing legal principles establish the extent to which the states can regulate employers, the final rule simply requires that the program be specifically established pursuant to state law and that the employer's participation be required by state law. 29 CFR 2510.3–2(h)(1)(i) and (ix). These two conditions define and limit the safe harbor to be coextensive with the state's authority to regulate employers.

C. Assuming Responsibility for the Security of Payroll Deductions

A number of commenters provided comments on paragraph (h)(1)(iii) of the proposal, which in relevant part provides that a state must ''assume[] responsibility for the security of payroll deductions . . . .'' Many commenters representing states were concerned that this condition might be construed to hold states strictly liable for payroll deductions, even in extreme cases such as, for example, fraud or theft by employers.

This condition does not make states guarantors or hold them strictly liable for any and all employers' failures to transmit payroll deductions. Rather, this condition would be satisfied if the state established and followed a process to ensure that employers transmit payroll deductions safely, appropriately and in a timely fashion.

Nor does this condition contemplate only a single approach to satisfy the safe harbor. For instance, some states have freestanding wage withholding and theft laws, as well as enforcement programs (such as audits) to protect employees from wage theft and similar problems. Such laws and programs ordinarily would satisfy this condition of the safe harbor if they are applicable to the payroll deductions under the state payroll deduction savings program and enforced by state agents. Other states, however, have adopted, or are considering adopting, timing and enforcement provisions specific to their payroll deduction savings programs.[32] In the Department's view, the safe harbor would permit this approach as well.

Some commenters requested that the Department expand paragraph (h)(1)(iii) by adding several conditions to require states to adopt various consumer protections, such as conditions requiring deposits to be made to IRAs within a maximum number of days, civil and criminal penalties for deposit failures, and education programs for employees regarding how to identify employer misuse of payroll deductions. The Department encourages the states to adopt consumer protections along these lines, as necessary or appropriate. The Department declines the commenters' suggestion to make them explicit conditions of the safe harbor, however, as each state is best positioned to calibrate the type of consumer protections needed to secure payroll deductions. Accordingly, the final rule adopts the proposal's provision without change.

D. Requiring Employer's Participation To Be ''Required by State Law''

1. In General

A number of commenters raised concerns with paragraph (h)(1)(x) of the proposal, which in relevant part states that the employer's participation in the program must be ''required by State law[.]'' Several commenters representing states and financial service providers requested that the Department not include this condition in the final rule. These commenters believe the safe harbor should extend to employers that choose whether or not to participate in a state payroll deduction savings program with automatic enrollment, as long as the state—and not the employer—thereafter controls and administers the program. Another commenter asserted that automatic enrollment ''goes to whether a plan is 'completely voluntary' or 'voluntary' for an employee and should not be used as a material measure of how limited an employer's involvement is, especially in this case where the employer has no say in whether automatic enrollment is provided for under the state-run arrangement.''

It is the Department's view that an employer that voluntarily chooses to automatically enroll its employees in a state payroll deduction savings program has established a pension plan under ERISA and should not be eligible for a safe harbor exclusion from ERISA. ERISA broadly defines ''pension plan'' to encompass any ''plan, fund, or program'' that is ''established or maintained'' by an employer to provide retirement income to its employees. Under ERISA's expansive test, when an employer voluntarily chooses to provide retirement income to its employees through a particular benefit arrangement, it effectively establishes or maintains a plan. This is no less true when the employer chooses to provide the benefits through a voluntary arrangement offered by a state than when it chooses to provide the benefits through the purchase of an insurance policy or some other contractual arrangement. In either case, the employer made a voluntary decision to provide retirement benefits to its employees as part of a particular plan, fund, or program that it chose to the exclusion of other possible benefit arrangements.

In such circumstances, the employer, by choosing to participate in the state program, is effectively making plan design decisions that have direct consequences to its employees. Decisions subsumed in the employer's choice include, for example, the intended benefits, source of funding, funding medium, investment strategy, contribution amounts and limits, procedures to apply for and collect benefits, and form of distribution. By contrast, an employer that is simply complying with a state law requirement is not making any of these decisions and therefore reasonably can be viewed as complying with the safe harbor and not establishing or maintaining a pension plan under section 3(2) of ERISA.[33] The state has required the employer to participate and automatically enroll its employees; the employer neither voluntarily elects to do this nor significantly controls the program. Limited employer involvement in the program is the key to a determination that the employer has not established or maintained an employee pension benefit plan. The employer's participation must be required by state law—if it is voluntary, the safe harbor does not apply.

The 1975 IRA Payroll Deduction Safe Harbor is still available, however, to interested parties who voluntarily choose to facilitate employees' participation in a state program, if the conditions of that safe harbor are met and if permitted under the state payroll deduction savings program. As discussed above, the 1975 IRA Payroll

[32] Connecticut Retirement Security Program, P.A. 16–29, §§ 7(e) and 10(b) (2016).

[33] One commenter asserted that the proposal contrasted with the Department's prior positions on ERISA preemption, and cited the Department's amicus brief in *Golden Gate Rest. Ass'n* v. *San Francisco,* 546 F.3d 639 (9th Cir. 2008). Because arrangements that comply with the safe harbor are being determined by regulation not to be ERISA plans, the Department sees its position in the *Golden Gate* case as distinguishable from its position here. The commenter also argued that the Supreme Court opinion in *Fort Halifax Packing Co.* v. *Coyne,* 482 U.S. 1 (1987), where the court found that a state law requiring employers to make severance payments to employees under certain circumstance was not preempted by ERISA because it did not require establishment of an ongoing administrative scheme, was not support for the Department's proposal. Although such an ongoing scheme may be a necessary element of a plan, it is not, as evidenced by the Department's earlier safe harbors, sufficient to establish an employee benefit plan under ERISA where other conditions—such as being established or maintained by an employer or employee organization, or both—are absent.

Deduction Safe Harbor has terms and conditions substantially similar to those in the safe harbor being adopted today, but it does not permit automatic enrollment, even if accompanied by an option to opt out. Thus, if a state payroll deduction savings program permits employees of employers that are not subject to the state's automatic enrollment requirement to affirmatively choose to participate in the program, neither such participation nor the employer's facilitation of that participation would result in the employer having established an ERISA-covered plan, as long as the employer and state program satisfy the conditions in the 1975 IRA Payroll Deduction Safe Harbor.

Some commenters asserted that the Department was arbitrary in interpreting the 1975 safe harbor to prohibit automatic enrollment. However, as discussed at greater length in the NPRM, the Department's interpretation of the ''completely voluntary'' provision in the safe harbor is a reasonable reading of the safe harbor condition supported by legal authorities interpreting the concept of ''completely voluntary'' in other contexts. The interpretation of the safe harbor is also consistent with a legitimate policy concern about employers implementing ''opt-out'' provisions in employer-endorsed IRA arrangements without having to comply with ERISA duties and consumer protection provisions. That concern is not present with respect to state programs that require employers to auto-enroll employees in a state sponsored IRA program.

One commenter asserted that the Department's analysis in the proposal of whether an automatic payroll deduction savings program operated by a state is an ERISA plan conflicts with the analysis in the interpretive bulletin relating to whether a state can sponsor a multiple employer plan. This comment misapprehends the Department's position in this rulemaking. If the state and the employer comply with the safe harbor conditions, the Department's view is that no ERISA plan is established. Although the interpretive bulletin indicates that a state may under some circumstances act for (in the interest of) a group of voluntarily participating employers in establishing an ERISA-covered multiple employer plan, the bulletin does not mean a state would be similarly acting for employers when it requires that they participate in a program requiring the offering of a savings arrangement that is not an ERISA plan.

2. Special Treatment for Reduction in Size of Employer

Several commenters raised the issue whether the final rule could or should address situations in which an employer that was once required to participate in a state program ceases to be subject to the state requirement due to a change in its size. These commenters noted that most state payroll deduction IRA laws contain an exemption for small employers. In California and Connecticut, for instance, employers with fewer than 5 employees are not subject to the state law requirement.[34] In Illinois, the exemption is available to employers with fewer than 25 employees.[35] Thus, as the commenters noted, an employer that is subject to the requirement could subsequently drop below a state's threshold number of employees, and into the exemption, simply by having one employee resign. The commenters asked whether an employer that falls below the minimum number of employees could continue to make payroll deductions for existing employees (or automatically enroll new employees) under the program and still meet the conditions of the Department's safe harbor.

The situation identified by the commenters results from the operation of the particular state law and is properly a matter for the states to address. For example, a state law with the type of small employer exemption discussed above could require that an employer, once subject to the participation requirement, remains subject to it (either permanently or at least for the balance of the year or some other specified period of time), without regard to future fluctuations in workforce size. A state might also require an employer to maintain payroll deductions for employees who were enrolled when the employer was subject to the requirement, but not require the employer to make deductions for new employees until after its work force has regained the minimum number of employees. An employer that ceases to be subject to a state participation requirement, but that continues the payroll deductions or automatically enrolls new employees into the state program, would be acting outside the boundaries of the new safe harbor. However, its continued participation in the program would reflect its voluntary decision to provide retirement benefits pursuant to a particular plan, fund, or program. Accordingly, it would thereby establish or maintain an ERISA-covered plan.

Nevertheless, if the state allows but does not require an exempted small employer to enroll employees in the program, the employer may be able to do so without establishing an ERISA plan if the employer complies with the conditions of the Department's 1975 IRA Payroll Deduction Safe Harbor, which ensure minimal employer involvement in the employees' completely voluntary decision to participate in particular IRAs. To comply with these conditions, the employer would not be able to make payroll deductions for employees without their affirmative consent.

In the event that an employer establishes its own ERISA-covered plan under a state program, that plan would be subject to ERISA's reporting, disclosure, and fiduciary standards. In such circumstances, the employer generally would be considered the ''plan sponsor'' and ''administrator'' of its plan, as defined in section 3(16) of ERISA.[36] The Department would not, however, view the establishment of an ERISA plan by an employer participating in the state program as affecting the availability of the safe harbor for other participating employers.

E. Extending the Safe Harbor to Political Subdivisions

A number of commenters urged the Department to expand the safe harbor to cover payroll deduction savings programs established by political subdivisions of states. The proposal was limited to payroll deduction savings programs established by ''States.'' For this purpose, the proposal defined the term ''State'' by reference to section 3(10) of ERISA. Section 3(10) of ERISA, in relevant part, defines the term ''State'' as including ''any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, [and] Wake Island.'' Thus, the proposed safe harbor was not available to payroll deduction savings programs established by political subdivisions of states, such as cities and counties.

[34] Cal. Gov't Code § 100000(d) (2012); Conn. P.A. 16–29, § 1(7) (2016).

[35] 820 Ill. Comp. Stat. 80/5 (2015).

[36] Commenters requested that this regulation provide a method for employers or states that inadvertently take actions causing an arrangement or program to fail to satisfy the safe harbor to cure that failure and qualify for the safe harbor. Commenters also requested that this regulation allow employers to cure ERISA failures that might result from the creation of an ERISA plan. Although these issues are beyond the scope of this regulation, if problems arise relating to these topics for particular state programs, the Department invites states and other interested persons to ask the Department to consider whether some additional guidance or relief would be appropriate.

These commenters argued that the proposal would be of little or no use for employees of employers in political subdivisions in states that choose not to have a state-wide program, even though there is strong interest in a payroll deduction savings program at a political subdivision level, such as New York City, for example.[37] These commenters asked the Department to consider extending the safe harbor in the proposal essentially to large political subdivisions (in terms of population) with authority and capacity to maintain such programs.[38] Others, however, are concerned that such an expansion might lead to overlapping and possibly conflicting requirements on employers, both within and across states.

The Department agrees with commenters that there may be good reasons for expanding the safe harbor, but believes its analysis of the issue would benefit from additional public comments. Accordingly, in the Proposed Rules section of today's **Federal Register**, the Department published a notice of proposed rulemaking seeking to amend paragraph (h) of § 2510.3–2 to cover certain state political subdivision programs that otherwise comply with the conditions in the final rule. The proposal seeks public comment on not only whether, but also how to amend paragraph (h) of § 2510.3–2 to include political subdivisions of states. Commenters are encouraged to focus on how broadly or narrowly an amended safe harbor might define the term ''qualified political subdivision'' taking into account the impact of such an expansion on employers, employees, political subdivisions, and states themselves.[39]

V. Regulatory Impact Analysis

A. Executive Order 12866 Statement

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as an ''economically significant'' action); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal requirements, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this regulatory action is not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, it has determined that the action is significant within the meaning of section 3(f)(4) of the Executive Order. Accordingly, OMB has reviewed the final rule and the Department provides the following assessment of its benefits and costs.

Several states have adopted or are considering adopting state payroll deduction savings programs to increase access to retirement savings for individuals employed or residing in their jurisdictions. As stated above, this document amends existing Department regulations by adding a new safe harbor describing the circumstances under which such payroll deduction savings programs, including programs featuring automatic enrollment, would not give rise to the establishment or maintenance of ERISA-covered employee pension benefit plans. State payroll deduction savings programs that meet the requirements of the safe harbor would be established by states, and state law would require certain private-sector employers to participate in such programs. By making clear that state payroll deduction savings programs with automatic enrollment that conform to the safe harbor in the final rule do not give rise to the establishment of ERISA-covered plans, the objective of the safe harbor is to reduce the risk of such state programs being preempted if they were challenged.

In analyzing benefits and costs associated with this final rule, the Department focuses on the direct effects, which include both benefits and costs directly attributable to the rule. These benefits and costs are limited, because as stated above, the final rule merely establishes a safe harbor describing the circumstances under which such state payroll deduction savings programs would not give rise to ERISA-covered employee pension benefit plans. It does not require states to take any actions nor employers to provide any retirement savings programs to their employees.

The Department also addresses indirect effects associated with the rule, which include potential benefits and costs directly associated with the scope and provisions of the state laws creating the programs, and include the potential increase in retirement savings and potential cost burden imposed on covered employers to comply with the requirements of the state programs. Indirect effects vary by state depending on the scope and provisions of the state law, and by the degree to which the rule might influence state actions.

1. Direct Benefits

As discussed earlier in this preamble, some state legislatures have passed laws designed to expand workers' access to workplace savings arrangements, including states that have established state payroll deduction savings programs. Through automatic enrollment such programs encourage employees to establish IRAs funded by payroll deductions. As noted, California, Connecticut, Illinois, Maryland, and Oregon, for example, have adopted laws along these lines. In addition, some states are looking at ways to encourage employers to provide coverage under state-administered 401(k)-type plans, while others have adopted or are considering approaches that combine several retirement alternatives including IRAs and ERISA-covered plans.

One of the challenges states face in expanding retirement savings opportunities for private-sector employees is uncertainty about ERISA preemption of such efforts. ERISA

[37] *See, e.g.*, Comment Letter #57 (The Public Advocate for the City of New York) (''The United States Department of Labor's proposed rule reflects the Department's clear understanding of the dire need for policymakers to develop retirement security solutions for millions of Americans. However, we are concerned that by not including cities in its proposed rule, in particular those with populations over a certain size—such as one million residents—the Department could significantly thwart the positive objectives of the proposed rule.'').

[38] *See, e.g.*, Comment Letter #36 (AFL–CIO) (''With respect to political subdivisions of a state, we suggest the Department establish minimum eligibility requirements to ensure that the political entity has the administrative capacity and sophistication necessary to administer a retirement savings arrangement, protect the rights of participating workers, and ensure the security of workers' payroll deductions and retirement savings. The Department could use easily measured proxies for administrative capacity and sophistication. For example, total population of a political subdivision as measured by the most recent decennial census or an interim population estimate published by the U.S. Census Bureau would be an appropriate proxy. The eligibility threshold could be set at or near the total population of the smallest of the 50 states, such as 500,000.'').

[39] Some commenters asked whether states could join together in multi-state programs. Nothing in the safe harbor precludes states from agreeing to coordinate state programs or to act in unison with respect to a program.

generally would preempt a state law that required employers to establish or maintain ERISA-covered employee benefit pension plans. The Department therefore believes that states and other stakeholders would benefit from clear guidelines to determine whether state saving initiatives would effectively require employers to create ERISA-covered plans. The final rule would provide a new ''safe harbor'' from coverage under Title I of ERISA for state savings arrangements that conform to certain requirements. State initiatives within the safe harbor would not result in the establishment of employee benefit plans under ERISA. The Department expects that the final rule would reduce legal costs, including litigation costs, by (1) removing uncertainty about whether such state savings arrangements are covered by Title I of ERISA, and (2) creating efficiencies by eliminating the need for multiple states to incur the same costs to determine their non-plan status.

The Department notes that the final rule would not prevent states from identifying and pursuing alternative policies, outside of the safe harbor, that also would not require employers to establish or maintain ERISA-covered plans. Thus, while the final rule would reduce uncertainty about state activity within the safe harbor, it would not impair state activity outside of it.

Some comments expressed concern about whether the safe harbor rule requires employers to participate in states' savings arrangements, and whether it implicitly indicates the Department's views on arrangements that do not fully conform to the conditions of the safe harbor. To address these concerns, the Department added regulatory text in the final rule explicitly recognizing that the regulation is a safe harbor and as such, does not require employers to participate in state payroll deduction savings programs or arrangements nor does it purport to define every possible program that could fall outside of Title I of ERISA.

2. Direct Costs

The final rule does not require any new action by employers or the states. It merely establishes a safe harbor describing certain circumstances under which state-required payroll deduction savings programs would not give rise to an ERISA-covered employee pension benefit plan. States may incur legal costs to analyze the rule and determine whether their laws fall within the final rule's safe harbor. However, the Department expects that these costs will be less than the costs that would be incurred in the absence of the final rule.

3. Uncertainty

The Department is confident that the final safe harbor rule, by clarifying that certain state payroll deduction savings programs do not require employers to establish ERISA-covered plans, will benefit states and many other stakeholders otherwise beset by greater uncertainty. However, the Department is unsure as to the magnitude of these benefits. The magnitude of the final rule's benefits, costs and transfer impacts will depend on the states' independent decisions on whether and how best to take advantage of the safe harbor and on the cost that otherwise would have attached to uncertainty about the legal status of the states' actions. The Department cannot predict what actions states will take, stakeholders' propensity to challenge such actions' legal status, either absent or pursuant to the final rule, or courts' resultant decisions.

4. Indirect Effects of Safe Harbor Rule: Impact of State Initiatives

As discussed above, the impact of state payroll deduction saving programs is directly attributable to the state legislation that creates such programs. As discussed below, however, under certain circumstances, these effects could be indirectly attributable to the final rule. For example, it is conceivable that more states could create payroll deduction savings programs due to the guidelines provided in the final rule and the reduced risk of an ERISA preemption challenge, and therefore, the increased prevalence of such programs would be indirectly attributable to the final rule. If this issue were ultimately resolved in the courts, the courts could make a different preemption decision in the rule's presence than in its absence. Furthermore, even if a potential court decision would be the same with or without the rulemaking, the potential reduction in states' uncertainty-related costs could induce more states to pursue these workplace savings initiatives. An additional possibility is that the rule would not change the prevalence of state payroll deduction savings programs, but would accelerate the implementation of programs that would exist anyway. With any of these possibilities, there would be benefits, costs and transfer impacts that are indirectly attributable to this rule, via the increased or accelerated creation of state programs.

Commenters expressed concern that states will incur substantial costs to implement their payroll deduction savings programs. One state estimates that it will incur $1.2 million in administrative and operating costs during the initial start-up years.[40] To administer its opt-out process, the same state estimates it will incur $465,000 in one-time mailing and form production costs.[41] Another state estimated that it will take several years before its savings arrangement becomes self-sufficient and it would require a subsidy of between $300,000 and $500,000 a year for five to seven years.[42] Commenters also raised concerns about the states' potential fiduciary liability associated with establishing state payroll deduction savings programs.

The Department is aware of these potential costs, and although the commenters raise valid concerns, the costs are not directly attributable to the final rule; they are attributable to the state legislation creating the payroll deduction savings program. In enacting their programs, states are responsible for estimating the associated costs during the legislative process and determining whether the arrangement is self-sustainable and whether the state has sufficient resources to bear the associated costs and financial risk. States can design their programs to address these concerns, and presumably, will enact state payroll deduction legislation only after determining that the benefits of such programs justify their costs.

Employers may incur costs to update their payroll systems to transmit payroll deductions to the state or its agent, develop recordkeeping systems to document their collection and remittance of payments under the program, and provide information to employees regarding the state savings arrangement. As with states' operational and administrative costs, some portion of these employer costs would be indirectly attributable to the rule if more state payroll deduction savings programs are implemented in the rule's presence than would be in its absence. Because the employers' administrative burden to participate in the state program is generally limited to withholding the required contribution from employees' wages, remitting contributions to the state program, and providing information about the program to employees in order to satisfy the safe harbor, most associated costs for employers would be minimal.

[40] Department of Finance Bill Analysis, California Department of Finance (May 2, 2012).

[41] *Id.*

[42] Voluntary Employee Accounts Program Study, Maryland Supplemental Requirement Plans (2008).

Although such costs would be limited for employers, several commenters expressed concern that these costs would be incurred disproportionately by small employers and start-up companies, which tend to be least likely to offer pensions. According to one survey submitted with a comment, about 60% of small employers do not use a payroll service.[43] The commenters assert that these small employers may incur additional costs to use external payroll companies to comply with their states' payroll deduction savings programs. However, some small employers may decide to use a payroll service to withhold and remit payroll taxes independent of their state's program requirements. Therefore, the extent to which these costs can be attributable to states' initiatives could be smaller than what commenters estimated. Moreover, most state payroll deduction savings programs exempt the smallest companies,[44] which could mitigate such costs.

Additional cost-related comments addressed penalties that employers are subject to pay if they fail to comply with the requirements of their states' programs.[45] The commenter argued that those penalties would be more detrimental to small employers because profit margins of small employers are often very thin. However, the costs associated with those penalties are due to a failure to comply with state law. In addition, the final rule accommodates commenters and allows states to use tax incentives or credits as long as their economic incentives are narrowly tailored to reimbursing the costs of states' payroll deduction savings programs. If states reimburse employers for costs incurred to comply with their payroll deduction savings programs, the employers' cost burden can be substantially reduced.

While several comments focused on the cost burden imposed on small employers, an organization representing small employers expressed support for state efforts to establish state payroll deduction savings arrangements, because such arrangements provide a convenient and affordable option for small businesses and their employees to save for retirement. This commenter further states that small business owners want to offer the benefit of retirement savings to their employees because it would help them attract and retain talented employees.

The Department believes that well-designed state-level initiatives have the potential to effectively reduce gaps in retirement security. Relevant variables such as pension coverage,[46] labor market conditions,[47] population demographics,[48] and elderly poverty,[49] vary widely across the states, suggesting a potential opportunity for progress at the state level. Many workers throughout these states currently may save less than would be optimal because of (1) behavioral biases (such as myopia or inertia), (2) labor market conditions that prevent them from accessing plans at work, or (3) they work for employers that simply do not offer retirement plans.[50] Some research suggests that automatic contribution policies are effective in increasing retirement savings and wealth in general by overcoming behavioral biases or inertia.[51] Well-designed state initiatives could help many savers who otherwise might not be saving enough or at all to begin to save earlier than they might have otherwise. Such workers will have traded some consumption today for more in retirement, potentially reaping net gains in overall lifetime well-being. Their additional savings may also reduce fiscal pressure on publicly financed retirement programs and other public assistance programs, such as the Supplemental Nutritional Assistance Program, that support low-income Americans, including older Americans.

However, several commenters were skeptical about potential benefits of state payroll deduction savings arrangements. These commenters believe the potential benefits—primarily increases in retirement savings—would be limited because the proposed safe harbor rule does not allow employer contributions to state payroll deduction programs.

The Department believes that well-designed state initiatives can achieve their intended, positive effects of fostering retirement security. However, the initiatives might have some unintended consequences as well. Those workers least equipped to make good retirement savings decisions arguably stand to benefit most from state initiatives, but also arguably could be at greater risk of suffering adverse unintended effects. Workers who would not benefit from increased retirement savings could opt out, but some might fail to do so. Such workers might increase their savings too much, unduly sacrificing current economic needs. Consequently they might be more likely to cash out early and suffer tax losses (unless they receive a non-taxable Roth IRA distribution), and/or to take on more expensive debt to pay necessary bills. Similarly, state initiatives directed at workers who do not currently participate in workplace savings arrangements may be imperfectly targeted to address gaps in retirement security. For example, some college students might be better advised to take less in student loans rather than open an IRA, and some young families might do well to save more first for their children's education and later for their own retirement. This concern was shared by some commenters who stated that workers without retirement plan coverage tend to be younger, lower-income or less attached to the workforce, which implies that these workers are often financially stressed or have other savings goals. These comments imply that the benefits of state payroll deduction savings arrangements could be limited and in some cases potentially harmful for certain workers. The Department notes

[43] National Small Business Association, April 11, 2013, "2013 Small Business Taxation Survey." This survey says 23% of small employers that handle payroll taxes internally have no employee. Therefore, only about 46%, not 60%, of small employers are in fact affected by state initiatives, based on this survey. The survey does not include small employers that use payroll software or on-line payroll programs, which provide a cost effective means for such employers to comply with payroll deduction savings programs.

[44] For example, California Secure Choice would affect employers with 5 or more employees, Illinois Secure Choice would affect employers with 25 or more employees, and Connecticut Retirement Security would affect employers with 5 or more employees. Cal. Gov.t Code § 100000(d) (2012); 820 Ill. Comp. Stat. 80/5 (2015); Conn. P.A. 16–29 § 1(7) (2016).

[45] For example, according to a comment letter, the Illinois Secure Choice Savings Program allows for a penalty for noncompliance in the first year of $250 per employee per year, which then increases to $500 for noncompliance per employee for each subsequent year.

[46] *See, e.g.,,* Craig Copeland, "Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013," Employee Benefit Research Institute, Issue Brief No. 405 (October 2014) (available at *www.ebri.org*). *See also* a report from the Pew Charitable Trusts, "How States Are Working to Address The Retirement Savings Challenge," (June 2016).

[47] *See, e.g.,* U.S. Bureau of Labor Statistics, "Regional and State Employment and Unemployment—JUNE 2015," USDL–15–1430 (July 21, 2015).

[48] *See, e.g.,* Lindsay M. Howden and Julie A. Meyer, "Age and Sex Composition: 2010," U.S. Bureau of the Census, 2010 Census Briefs C2010BR–03 (May 2011).

[49] Constantijn W. A. Panis & Michael Brien, "Target Populations of State-Level Automatic IRA Initiatives," (August 28, 2015).

[50] According to National Compensation Survey, March 2015, about 69% of private-sector workers have access to retirement benefits—including Defined Benefit and Defined Contribution plans—at work.

[51] *See* Chetty, Friedman, Leth-Petresen, Nielsen & Olsen, "Active vs. Passive Decisions and Crowd-out in Retirement Savings Accounts: Evidence from Denmark," 129 Quarterly Journal of Economics 1141–1219 (2014); *See also* Madrian and Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," 116 Quarterly Journal of Economics 1149–1187 (2001).

that the states are responsible for designing effective programs that minimize these types of harm and maximize benefits to participants.

Some commenters also raised the concern that state initiatives may ''crowd-out'' ERISA-covered plans. According to one comment, the proposed rule could inadvertently encourage large employers operating in multiple states to switch from ERISA-covered plans to state-run arrangements in order to reduce costs, especially if they are required to cover employees currently ineligible to participate in ERISA-covered plans under state-run arrangements. Some commenters were concerned about employers' burden to monitor their obligations under the state laws particularly when employers operate in multiple states. These commenters raised the possibility that large employers would incur substantial costs to monitor the participation status of ineligible workers, such as part-time or seasonal workers. The final rule clarifies that state payroll deduction savings programs directed toward employers that do not offer other retirement plans fall within this safe harbor rule. However, employers that wish to provide retirement benefits are likely to find that ERISA-covered programs, such as 401(k) plans, have advantages for them and their employees over participation in state programs. Potential advantages include significantly greater tax preferences, greater flexibility in plan selection and design, opportunity for employers to contribute, ERISA protections, and larger positive recruitment and retention effects. Therefore it seems unlikely that state initiatives will ''crowd-out'' many ERISA-covered plans, although, if they do, some workers might lose ERISA-protected benefits that could have been more generous and more secure than state-based (IRA) benefits if states do not adopt consumer protections similar to those Congress provided under ERISA.

There is also the possibility that some workers who would otherwise have saved more might reduce their savings to the low, default levels associated with some state programs. States can address this concern by incorporating into their programs participant education or ''auto-escalation'' features that increase default contribution rates over time and/or as pay increases.

Some commenters were concerned that state payroll deduction savings arrangements would in general provide participants with less consumer protection than ERISA-covered plans. Another commenter pointed out that one particular state's payroll deduction savings program would require employees to pay higher fees than those charged to private plans.[52] However, a careful review of the report cited in this comment suggests that fees set by this particular state's arrangement are not inconsistent with the average fees in the mutual fund industry.[53] Moreover, the Department reiterates that states enacting savings arrangements can take actions to augment consumer protections.

B. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department solicited comments regarding its determination that the proposed rule is not subject to the requirements of the PRA, because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3). The Department's conclusion was based on the premise that the proposed rule did not require any action by or impose any requirements on employers or states. It merely clarified that certain state payroll deduction savings programs that encourage retirement savings would not result in the creation of ERISA-covered employee benefit plans if the conditions of the safe harbor were met.

The Department did not receive any comments regarding this assessment. Therefore, the Department has determined that the final rule is not subject to the PRA, because it does not contain a collection of information. The PRA definition of ''burden'' excludes time, effort, and financial resources necessary to comply with a collection of information that would be incurred by respondents in the normal course of their activities. *See* 5 CFR 1320.3(b)(2). The definition of ''burden'' also excludes burdens imposed by a state, local, or tribal government independent of a Federal requirement. *See* 5 CFR 1320.3(b)(3). The final rule imposes no burden on employers because states customarily include notice and recordkeeping requirements when enacting their payroll deduction savings programs. Thus, employers participating in such programs are responding to state, not Federal, requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

Although several commenters maintained that the proposed rule would impose significant costs on small employers, similar to the proposal, the final rule merely establishes a new safe harbor describing circumstances in which state payroll deduction savings programs would not give rise to ERISA-covered employee pension benefit plans. Therefore, the final rule imposes no requirements or costs on small employers, and the Department believes that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to section 605(b) of the RFA, the Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or the private-sector, which may impose an annual burden of $100 million.

E. Congressional Review Act

The final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual

[52] According to a comment letter, Illinois' Secure Choice Savings Program stated that the costs of fees paid by employees will be charged up to 0.75 percent of the overall balances, which is higher than those charged to 401(k) plan participants who invested in equity mutual funds (0.58 percent).

[53] According to the ICI Research Perspective, ''The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2014,'' the mutual fund industry average expense ratio was 0.74 percent in 2013 and in 0.70 percent in 2014, which are in the comparable range to the Illinois Secure Choice Savings Program's ceiling in fees, 0.75 percent.

effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

F. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism. It also requires adherence to specific criteria and requirements, such as consultation with state and local officials, in the case of policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government.''

The final rule describes circumstances under which a state payroll deduction savings program would not constitute the establishment or maintenance of an ERISA-covered plan by specified actors. Such guidance may therefore be helpful to states that have taken or might take action, but the safe harbor does not limit the actions that states could take. The safe harbor does not require states to do anything or preempt state law. Nor does it act directly on a state, or cause any state to do anything the state had not already decided or is inclined to do on its own. For example, as described elsewhere in this final rule, a state program that fell outside the terms of the safe harbor would not necessarily result in the creation of ERISA plans. The regulation itself is devoid of consequences to the state or states that decide not to follow its terms. In other words, the regulation may indirectly influence how states design their payroll deduction savings programs, but its existence is unlikely to be dispositive on whether states adopt programs in the first instance, as evidenced by some states that already enacted legislation. Therefore, the final rule does not contain polices with federalism implications within the meaning of the Order.

Nonetheless, in respect for the fundamental federalism principles set forth in the Order, the Department affirmatively engaged in outreach with officials of states, and with employers and other stakeholders, regarding the proposed rule and sought their input on any federalism implications that they believe may be presented by the safe harbor. Departmental staff engaged in numerous meetings, conference calls, and outreach events with interested stakeholders on the proposed rule and on various state legislative proposals. The Department also received numerous comment letters from states and local governments and their representatives. Many of the changes in the final rule stem from suggestions contained in these comment letters. Indeed, the notice of proposed rulemaking on political subdivisions discussed earlier in this preamble also stems from comments and concerns raised by state or local governments.

List of Subjects in 29 CFR Part 2510

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting, Coverage.

For the reasons stated in the preamble, the Department of Labor amends 29 CFR part 2510 as set forth below:

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, G, AND L OF THIS CHAPTER

■ 1. The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012); Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 237 (2012), E.O. 12108, 44 FR 1065 (Jan. 3, 1979) and 29 U.S.C. 1135 note. Sec. 2510.3–38 is also issued under sec. 1, Pub. L. 105–72, 111 Stat. 1457 (1997).

■ 2. In § 2510.3–2, revise paragraph (a) and add paragraph (h) to read as follows:

§ 2510.3–2 Employee pension benefit plans.

(a) *General.* This section clarifies the terms ''employee pension benefit plan'' and ''pension plan'' for purposes of title I of the Act and this chapter by setting forth safe harbors under which certain specific plans, funds and programs would not constitute employee pension benefit plans when the conditions of this section are satisfied. The safe harbors in this section should not be read as implicitly indicating the Department's views on the possible scope of section 3(2). To the extent that these plans, funds and programs constitute employee welfare benefit plans within the meaning of section 3(1) of the Act and § 2510.3–1 of this part, they will be covered under title I; however, they will not be subject to parts 2 and 3 of title I of the Act.

* * * * *

(h) *Certain State savings programs.* (1) For purposes of title I of the Act and this chapter, the terms ''employee pension benefit plan'' and ''pension plan'' shall not include an individual retirement plan (as defined in 26 U.S.C. 7701(a)(37)) established and maintained pursuant to a State payroll deduction savings program, provided that:

(i) The program is specifically established pursuant to State law;

(ii) The program is implemented and administered by the State establishing the program (or by a governmental agency or instrumentality of the State), which is responsible for investing the employee savings or for selecting investment alternatives for employees to choose;

(iii) The State (or governmental agency or instrumentality of the State) assumes responsibility for the security of payroll deductions and employee savings;

(iv) The State (or governmental agency or instrumentality of the State) adopts measures to ensure that employees are notified of their rights under the program, and creates a mechanism for enforcement of those rights;

(v) Participation in the program is voluntary for employees;

(vi) All rights of the employee, former employee, or beneficiary under the program are enforceable only by the employee, former employee, or beneficiary, an authorized representative of such a person, or by the State (or governmental agency or instrumentality of the State);

(vii) The involvement of the employer is limited to the following:

(A) Collecting employee contributions through payroll deductions and remitting them to the program;

(B) Providing notice to the employees and maintaining records regarding the employer's collection and remittance of payments under the program;

(C) Providing information to the State (or governmental agency or instrumentality of the State) necessary to facilitate the operation of the program; and

(D) Distributing program information to employees from the State (or governmental agency or instrumentality of the State) and permitting the State (or governmental agency or instrumentality of the State) to publicize the program to employees;

(viii) The employer contributes no funds to the program and provides no bonus or other monetary incentive to employees to participate in the program;

(ix) The employer's participation in the program is required by State law;

(x) The employer has no discretionary authority, control, or responsibility under the program; and

(xi) The employer receives no direct or indirect consideration in the form of cash or otherwise, other than consideration (including tax incentives and credits) received directly from the State (or governmental agency or instrumentality of the State) that does not exceed an amount that reasonably approximates the employer's (or a typical employer's) costs under the program.

(2) A State savings program will not fail to satisfy the provisions of paragraph (h)(1) of this section merely because the program—

(i) Is directed toward those employers that do not offer some other workplace savings arrangement;

(ii) Utilizes one or more service or investment providers to operate and administer the program, provided that the State (or governmental agency or instrumentality of the State) retains full responsibility for the operation and administration of the program; or

(iii) Treats employees as having automatically elected payroll deductions in an amount or percentage of compensation, including any automatic increases in such amount or percentage, unless the employee specifically elects not to have such deductions made (or specifically elects to have the deductions made in a different amount or percentage of compensation allowed by the program), provided that the employee is given adequate advance notice of the right to make such elections and provided, further, that a program may also satisfy this paragraph (h) without requiring or otherwise providing for automatic elections such as those described in this paragraph (h)(2)(iii).

(3) For purposes of this section, the term State shall have the same meaning as defined in section 3(10) of the Act.

Signed at Washington, DC, this 24th day of August, 2016.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2016–20639 Filed 8–25–16; 4:15 pm]

BILLING CODE 4510–29–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0012]

RIN 1625–AA08

Special Local Regulation; Bucksport/ Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Bucksport/Lake Murray Drag Boat Fall Nationals, on September 10 and September 11, 2016. This special local regulation is necessary to ensure the safety of participants, spectators, and the general public during the event. This regulation prohibits persons and vessels from being in the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from September 10, 2016 through September 11, 2016. The rule will be enforced from 1 p.m. to 7 p.m. each day it is effective.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0012 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On December 27, 2015, the Bucksport Marina notified the Coast Guard that it will sponsor a series of drag boat races from 1 p.m. to 7 p.m. on September 10, 2016 and September 11, 2016. In response, on July 10, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Bucksport/Lake Murray Drag Boat Fall Nationals, Atlantic Intracoastal Waterway; Bucksport, SC, 81 FR 44815. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this special local regulation. During the comment period that ended August 10, 2016, we received no comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable due to the date of the event. The Coast Guard did not receive any adverse comments during the period outlined in the NPRM with regard to this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Bucksport/Lake Murray Drag Boat Fall Nationals, a series of high speed boat races.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published July 10, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule establishes a special local regulation on the Atlantic Intracoastal Waterway in Busksport, South Carolina during the Bucksport/Lake Murray Drag Boat Fall Nationals on September 10 and September 11, 2016. The special local regulation will be enforced daily from 1 p.m. until 7 p.m. on September 10 and September 11, 2016. Approximately 50 powerboats are expected to participate in the races and approximately 35 spectator vessels are expected to attend the event.

Except for those persons and vessels participating in the drag boat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through,

Appendix F – DOL Interpretive Bulletin

1. Office of the Federal Register, ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food,'' September 10, 2015. Available at *https://s3.amazonaws.com/public-inspection.federalregister.gov/2015-21920.pdf.*

2. FDA, ''FSMA Webinar Series: Preventive Controls for Human and Animal Food Final Rules,'' 2015. Available at *http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm461512.htm.*

3. FDA, ''Contact FDA About FSMA,'' 2015. Available at *http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm459719.htm.*

4. FDA, ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food; Clarification of Compliance Date for Certain Food Establishments,'' 2015. Available at: *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

Dated: November 10, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–29340 Filed 11–17–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket Nos. FR 5797–I–01 and FR 5797–C–02]

RIN 2506–AC39

Changes to Accounting Requirements for the Community Development Block Grants (CDBG) Program; Correction

AGENCY: Office of the General Counsel, HUD.

ACTION: Interim final rule; correction.

SUMMARY: This document corrects a technical error in HUD's interim final rule on CDBG accounting requirements, published November 12, 2015.

DATES: *Effective date:* December 14, 2015.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development, 451 7th Street SW., Suite 7286, Washington, DC 20410 at 202–708–3587, (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

SUPPLEMENTARY INFORMATION: HUD published a document in the **Federal Register** on November 12, 2015, at 80 FR 69864, amending the accounting requirements for the CDBG program, including 24 CFR 570.489. The amendments included clarification of how HUD determines compliance with planning and administration cost limits. In the preamble to the rule, at page 69867, first column, HUD stated that the regulations revised by rule modify the limits on administrative and planning expenses by adding to the existing compliance test a new test for grants with an origin year of 2015and subsequent years, which would continue to remain in place for all grants. However, language was inadvertently included in the regulatory text that limited the existing test to CDBG grants with an origin year prior to 2015. This document corrects that limiting language.

Correction

In interim final rule FR Doc. 2015–28700, published on November 12, 2015 (80 FR 69864), make the following correction:

On page 69872, in the first column, in § 570.489, correct paragraph (a)(3)(ii) to read as follows:

§ 570.489 Program administrative requirements.

(a) * * *

(3) * * *

(ii) The combined expenditures by the State and its funded units of general local government for planning, management, and administrative costs shall not exceed 20 percent of the aggregate amount of the origin year grant, any origin year grant funds reallocated by HUD to the State, and the amount of any program income received during the program year.

* * * * *

Dated: November 13, 2015.

Camille Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2015–29478 Filed 11–17–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2509

RIN 1210–AB74

Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Interpretive bulletin.

SUMMARY: This document sets forth the views of the Department of Labor (Department) concerning the application of the Employee Retirement Income Security Act of 1974 (ERISA) to certain state laws designed to expand the retirement savings options available to private sector workers through ERISA-covered retirement plans. Concern over adverse social and economic consequences of inadequate retirement savings levels has prompted several states to adopt or consider legislation to address this problem. The Department separately released a proposed regulation describing safe-harbor conditions for states and employers to avoid creation of ERISA-covered plans as a result of state laws that require private sector employers to implement in their workplaces state-administered payroll deduction IRA programs (auto-IRA laws). This Interpretive Bulletin does not address such state auto-IRA laws.

DATES: This interpretive bulletin is effective on November 18, 2015.

FOR FURTHER INFORMATION CONTACT: Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In order to provide a concise and ready reference to its interpretations of ERISA, the Department publishes its interpretive bulletins in the Rules and Regulations section of the **Federal Register**. The Department is publishing in this issue of the **Federal Register**, ERISA Interpretive Bulletin 2015–02, which interprets ERISA section 3(2)(A), 29 U.S.C. 1002(2)(A), section 3(5), 29 U.S.C. 1002(5), and section 514, 29 U.S.C. 1144, as they apply to state laws designed to expand workers' access to retirement savings programs. Some states have adopted laws or are exploring approaches designed to expand the retirement savings options available to their private sector workers through ERISA-covered retirement plans. One of the challenges the states face in expanding retirement savings opportunities for private sector employees is uncertainty about ERISA preemption of such efforts. ERISA generally would preempt a state law that required employers to establish and maintain ERISA-covered employee benefit pension plans. The Department also has a strong interest in promoting retirement savings by employees. The Department recognizes that some employers currently do not provide pension plans for their employees. The

Department believes that it is important that employees of such employers be encouraged to save for retirement, and it is in the interest of the public that employers be encouraged to provide opportunities for their employee retirement savings. The Department therefore believes that states, employers, other plan sponsors, workers, and other stakeholders would benefit from guidance on the application of ERISA to these state initiatives.

List of Subjects in 29 CFR Part 2509

Employee benefit plans, Pensions.

For the reasons set forth in the preamble, the Department is amending Subchapter A, Part 2509 of Title 29 of the Code of Federal Regulations as follows:

Subchapter A—General

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

■ 1. The authority citation for part 2509 continues to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012). Sections 2509.75–10 and 2509.75–2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75–5 also issued under 29 U.S.C. 1002. Sec. 2509.95–1 also issued under sec. 625, Public Law 109–280, 120 Stat. 780.

■ 2. Add § 2509.2015–02 to read as follows:

§ 2509.2015–02 Interpretive bulletin relating to state savings programs that sponsor or facilitate plans covered by the Employee Retirement Income Security Act of 1974.

(a) *Scope.* This document sets forth the views of the Department of Labor (Department) concerning the application of the Employee Retirement Income Security Act of 1974 (ERISA) to certain state laws designed to expand the retirement savings options available to private sector workers through ERISA-covered retirement plans. Concern over adverse social and economic consequences of inadequate retirement savings levels has prompted several states to adopt or consider legislation to address this problem.[1] An impediment to state adoption of such measures is uncertainty about the effect of ERISA's broad preemption of state laws that ''relate to'' private sector employee benefit plans. In the Department's view, ERISA preemption principles leave room for states to sponsor or facilitate ERISA-based retirement savings options for private sector employees, provided employers participate voluntarily and ERISA's requirements, liability provisions, and remedies fully apply to the state programs.

(b) *In General.* There are advantages to utilizing an ERISA plan approach. Employers as well as employees can make contributions to ERISA plans, contribution limits are higher than for other state approaches that involve individual retirement plans (IRAs) that are not intended to be ERISA-covered plans,[2] and ERISA plan accounts have stronger protection from creditors. Tax credits may also allow small employers to offset part of the costs of starting certain types of retirement plans.[3] Utilizing ERISA plans also provides a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, automatic enrollment rules, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections.

The Department is not aware of judicial decisions or other ERISA guidance directly addressing the application of ERISA to state programs that facilitate or sponsor ERISA plans, and, therefore, believes that the states, employers, other plan sponsors, workers, and other stakeholders would benefit from guidance setting forth the general views of the Department on the application of ERISA to these state initiatives. The application of ERISA in an individual case would present novel preemption questions and, if decided by a court, would turn on the particular features of the state-sponsored program at issue, but, as discussed below, the Department believes that neither ERISA section 514 specifically, nor federal preemption generally, are insurmountable obstacles to all state programs that promote retirement saving among private sector workers through the use of ERISA-covered plans.

Marketplace Approach

One state approach is reflected in the 2015 Washington State Small Business Retirement Savings Marketplace Act.[4] This law requires the state to contract with a private sector entity to establish a program that connects eligible employers with qualifying savings plans available in the private sector market. Only products that the state determines are suited to small employers, provide good quality, and charge low fees would be included in the state's ''marketplace.'' Washington State employers would be free to use the marketplace or not and would not be required to establish any savings plans for their employees. Washington would merely set standards for arrangements marketed through the marketplace. The marketplace arrangement would not itself be an ERISA-covered plan, and the arrangements available to employers through the marketplace could include ERISA-covered plans and other non-ERISA savings arrangements. The state would not itself establish or sponsor any savings arrangement. Rather, the employer using the state marketplace would establish the savings arrangement, whether it is an ERISA-covered employee pension benefit plan or a non-ERISA savings program. ERISA's reporting and disclosure requirements, protective standards and remedies would apply to the ERISA plans established by employers using the marketplace. On the other hand, if the plan or arrangement is of a type that would otherwise be exempt from ERISA (such as a payroll deduction IRA arrangement that satisfies the conditions of the existing safe harbor at 29 CFR 2510.3–2(d)), the state's involvement as organizer or facilitator of the marketplace would not by itself cause that arrangement to be covered by ERISA. Similarly, if, as in Washington State, a marketplace includes a type of

[1] For information on the problem of inadequate retirement savings, *see* the May 2015 Report of the United States Government Accountability Office (GAO), RETIREMENT SECURITY—Most Households Approaching Retirement Have Low Savings (GAO Report–15–419) (available at *www.gao.gov/assets/680/670153.pdf*). *Also see* GAO's September 2015 Report–15–566, RETIREMENT SECURITY—Federal Action Could Help State Efforts to Expand Private Sector Coverage (available at *www.gao.gov/assets/680/672419.pdf*).

[2] Some states are developing programs to encourage employees to establish tax-favored IRAs funded by payroll deductions rather than encouraging employers to adopt ERISA plans. Oregon, Illinois, and California, for example, have adopted laws along these lines. Oregon 2015 Session Laws, Ch. 557 (H.B. 2960) (June 2015); Illinois Secure Choice Savings Program Act, 2014 Ill. Legis. Serv. P.A. 98–1150 (S.B. 2758) (West); California Secure Choice Retirement Savings Act, 2012 Cal. Legis. Serv. Ch. 734 (S.B. 1234) (West). These IRA-based initiatives generally require specified employers to deduct amounts from their employees' paychecks, unless the employee affirmatively elects not to participate, in order that those amounts may be remitted to state-administered IRAs for the employees. The Department is addressing these state ''payroll deduction IRA'' initiatives separately through a proposed regulation that describes safe-harbor conditions for employers to avoid creation of ERISA-covered plans when they comply with state laws that require payroll deduction IRA programs. This Interpretive Bulletin does not address those laws.

[3] For more information, *see Choosing a Retirement Solution for Your Small Business,* a joint project of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) and the Internal Revenue Service. Available at *www.irs.gov/pub/irs-pdf/p3998.pdf.*

[4] 2015 Wash. Sess. Laws chap. 296 (SB 5826) (available at *http://app.leg.wa.gov/billinfo/summary.aspx?bill=5826&year=2015*).

plan that is subject to special rules under ERISA, such as the SIMPLE–IRA under section 101(h) of ERISA, the state's involvement as organizer or facilitator of the marketplace would not by itself affect the application of the special rules.

Prototype Plan Approach

Another potential approach is a state sponsored ''prototype plan.'' At least one state, Massachusetts, has enacted a law to allow nonprofit organizations with fewer than 20 employees to adopt a contributory retirement plan developed and administered by the state.[5] Banks, insurance companies and other regulated financial institutions commonly market prototype plans to employers as simple means for them to establish and administer employee pension benefit plans.[6] The financial institutions develop standard form 401(k) or other tax-favored retirement plans (such as SIMPLE–IRA plans) and secure IRS approval. Typically, employers may choose features such as contribution rates to meet their specific needs. Each employer that adopts the prototype sponsors an ERISA plan for its employees. The individual employers would assume the same fiduciary obligations associated with sponsorship of any ERISA-covered plans. For example, the prototype plan documents often specify that the employer is the plan's ''named fiduciary'' and ''plan administrator'' responsible for complying with ERISA, but they may allow the employer to delegate these responsibilities to others. The plan documents for a state-administered prototype plan could designate the state or a state designee to perform these functions. Thus, the state or a designated third-party could assume responsibility for most administrative and asset management functions of an employer's prototype plan. The state could also designate low-cost investment options and a third-party administrative service provider for its prototype plans.

Multiple Employer Plan (MEP) Approach

A third approach, (referenced, for example, in the ''Report of the Governor's Task Force to Ensure Retirement Security for All Marylanders''),[7] involves a state establishing and obtaining IRS tax qualification for a ''multiple employer'' 401(k)-type plan, defined benefit plan, or other tax-favored retirement savings program. The Department anticipates that such an approach would generally involve permitting employers that meet specified eligibility criteria to join the state multiple employer plan. The plan documents would provide that the plan is subject to Title I of ERISA and is intended to comply with Internal Revenue Code tax qualification requirements. The plan would have a separate trust holding contributions made by the participating employers, the employer's employees, or both. The state, or a designated governmental agency or instrumentality, would be the plan sponsor under ERISA section 3(16)(B) and the named fiduciary and plan administrator responsible (either directly or through one or more contract agents, which could be private-sector providers) for administering the plan, selecting service providers, communicating with employees, paying benefits, and providing other plan services. A state could take advantage of economies of scale to lower administrative and other costs.

As a state-sponsored multiple employer plan (''state MEP''), this type of arrangement could also reduce overall administrative costs for participating employers in large part because the Department would consider this arrangement as a single ERISA plan. Consequently, only a single Form 5500 Annual Return/Report would be filed for the whole arrangement. In order to participate in the plan, employers simply would be required to execute a participation agreement. Under a state MEP, each employer that chose to participate would not be considered to have established its own ERISA plan, and the state could design its defined contribution MEP so that the participating employers could have limited fiduciary responsibilities (the duty to prudently select the arrangement and to monitor its operation would continue to apply). The continuing involvement by participating employers in the ongoing operation and administration of a 401(k)-type individual account MEP, however, generally could be limited to enrolling employees in the state plan and forwarding voluntary employee and employer contributions to the plan. When an employer joins a carefully structured MEP, the employer is not the ''sponsor'' of the plan under ERISA, and also would not act as a plan administrator or named fiduciary. Those fiduciary roles, and attendant fiduciary responsibilities, would be assigned to other parties responsible for administration and management of the state MEP.[8] Adoption of a defined benefit plan structure would involve additional funding and other employer obligations.[9]

For a person (other than an employee organization) to sponsor an employee benefit plan under Title I of ERISA, such person must either act directly as the employer of the covered employees or ''indirectly in the interest of an employer'' in relation to a plan.[10] ERISA sections 3(2), 3(5). A person will be considered to act ''indirectly in the interest of an employer, in relation to a plan,'' if such person is tied to the contributing employers or their employees by genuine economic or representational interests unrelated to the provision of benefits.[11] In the

[5] The retirement plan will be overseen by the Massachusetts State Treasurer's Office. Mass. Gen. Laws ch.29, § 64E (2012). In June 2014, the Massachusetts Treasurer's Office announced that the IRS had issued a favorable ruling on the proposal, but noted that additional approval from the IRS is still needed (*see www.massnonprofitnet.org/blog/nonprofitretirement/*). *See also* GAO's Report 2015 Report–15–566, RETIREMENT SECURITY—Federal Action Could Help State Efforts to Expand Private Sector Coverage, which included the following statement at footnote 93 regarding the Massachusetts program: ''The Massachusetts official told us that each participating employer would be considered to have created its own plan, characterizing the state's effort as development of a volume submitter 401(k) plan, which is a type of employee benefit plan that is typically pre-approved by the Internal Revenue Service.'' (GAO report is available at *www.gao.gov/assets/680/672419.pdf*).

[6] *See* IRS Online Publication, *Types of Pre-Approved Retirement Plans* at *www.irs.gov/Retirement-Plans/Types-of-Pre-Approved-Retirement-Plans.*

[7] Governor's Task Force to Ensure Retirement Security for All Marylanders, *1,000,000 of Our Neighbors at Risk: Improving Retirement Security for Marylanders* (February 2015) (available at *www.dllr.state.md.us/retsecurity/*).

[8] A state developing a state sponsored MEP could submit an advisory opinion request to the Department under ERISA Procedure 76–1 to confirm that the MEP at least in form has assigned those fiduciary functions to persons other than the participating employers. ERISA Procedure 76–1 is available at *www.dol.gov/ebsa/regs/aos/ao_requests.html.*

[9] State laws authorizing defined benefit plans for private sector employers (as prototypes or as multiple employer plans) might create plans covered by Title IV of ERISA and subject to the jurisdiction of the Pension Benefit Guaranty Corporation (PBGC). Subject to some exceptions, the PBGC protects the retirement incomes of workers in private-sector defined benefit pension plans. A defined benefit plan provides a specified monthly benefit at retirement, often based on a combination of salary and years of service. PBGC was created by ERISA to encourage the continuation and maintenance of private-sector defined benefit pension plans, provide timely and uninterrupted payment of pension benefits, and keep pension insurance premiums at a minimum. More information is available on the PBGC's Web site at *www.pbgc.gov.*

[10] Different rules may apply under the Internal Revenue Code for purposes of determining the plan sponsor of a tax-qualified retirement plan.

[11] *See, e.g.,* Advisory Opinion 2012–04A. *See also MDPhysicians & Associates, Inc.* v. *State Bd. Ins.,* 957 F.2d 178,185 (5th Cir.), *cert. denied,* 506 U.S. 861 (1992) (''the entity that maintains the plan and the individuals that benefit from the plan [must be]

Department's view, a state has a unique representational interest in the health and welfare of its citizens that connects it to the in-state employers that choose to participate in the state MEP and their employees, such that the state should be considered to act indirectly in the interest of the participating employers.[12] Having this unique nexus distinguishes the state MEP from other business enterprises that underwrite benefits or provide administrative services to several unrelated employers.[13]

(c) *ERISA Preemption.* The Department is aware that a concern for states adopting an ERISA plan approach is whether or not those state laws will be held preempted. ERISA preemption analysis begins with the ''presumption that Congress does not intend to supplant state law.'' *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.,* 514 U.S. 645, 654 (1995). The question turns on Congress's intent ''to avoid a multiplicity of regulation in order to permit nationally uniform administration of employee benefit plans.'' *Id.* at 654, 657. *See also Fort Halifax Packing Co.* v. *Coyne,* 482 U.S. 1, 11 (1987) (goal of ERISA preemption is to ''ensure . . . that the administrative practices of a benefit plan will be governed by only a single set of regulations.'').

Section 514 of ERISA provides that Title I ''shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan'' covered by the statute. The U.S. Supreme Court has held that ''[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.'' *Shaw* v. *Delta Air Lines, Inc.,* 463 U.S. 85, 96–97 (1983) (footnote omitted); *see, e.g., Travelers,* 514 U.S. at 656. A law has a ''reference to'' ERISA plans if the law ''acts immediately and exclusively upon ERISA plans'' or ''the existence of ERISA plans is essential to the law's operation.'' *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A.,* 519 U.S. 316, 325–326 (1997). In determining whether a state law has a ''connection with ERISA plans,'' the U.S. Supreme Court ''look[s] both to 'the objectives of the ERISA statute as a guide to the scope of the state laws that Congress understood would survive,' as well as to the nature of the effect of the state law on ERISA plans,'' to ''determine whether [the] state law has the forbidden connection'' with ERISA plans. *Egelhoff* v. *Egelhoff,* 532 U.S. 141, 147 (2001) (quoting *Dillingham,* 519 U.S. at 325). In various decisions, the Court has concluded that ERISA preempts state 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.[14]

In the Department's view, state laws of the sort outlined above interact with ERISA in such a way that section 514 preemption principles and purposes would not appear to come into play in the way they have in past preemption cases. Although the approaches described above involve ERISA plans, they do not appear to undermine ERISA's exclusive regulation of ERISA-covered plans. The approaches do not mandate employee benefit structures or their administration, provide alternative regulatory or enforcement mechanisms, bind employers or plan fiduciaries to particular choices, or preclude uniform administrative practice in any way that would regulate ERISA plans.

Moreover, the approaches appear to contemplate a state acting as a participant in a market rather than as a regulator. The U.S. Supreme Court has found that, when a state or municipality acts as a participant in the market and does so in a narrow and focused manner consistent with the behavior of other market participants, such action does not constitute state regulation. *Compare Building and Construction Trades Council* v. *Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.,* 507 U.S. 218 (1993); *Wisconsin Department of Industry, Labor and Human Relations* v. *Gould,* 475 U.S. 282 (1986); *see also American Trucking Associations, Inc.* v. *City of Los Angeles,* 133 S. Ct. 2096, 2102 (2013) (Section 14501(c)(1) of the Federal Aviation Administration Authorization Act, which preempts a state ''law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier,'' 49 U.S.C. 14501(c)(1), ''draws a rough line between a government's exercise of regulatory authority and its own contract-based participation in a market''); *Associated General Contractors of America* v. *Metropolitan Water District of Southern California,* 159 F.3d 1178, 1182–84 (9th Cir. 1998) (recognizing a similar distinction between state regulation and state market participation). By merely offering employers particular ERISA-covered plan options[15] (or non-ERISA plan options), these approaches (whether used separately or together as part of a multi-faceted state initiative) do not dictate how an employer's plan is designed or operated or make offering a plan more costly for employers or employees. Nor do they make it impossible for employers operating across state lines to offer uniform benefits to their employees.[16] Rather than impair federal regulation of employee benefit plans, the state laws would leave the plans wholly subject to ERISA's regulatory requirements and protections.

Of course, a state must implement these approaches without establishing standards inconsistent with ERISA or providing its own regulatory or judicial remedies for conduct governed exclusively by ERISA. ERISA's system of rules and remedies would apply to these arrangements. A contractor retained by a state using the marketplace approach would be subject

tied by a common economic or representation interest, unrelated to the provision of benefits.'' (quoting *Wisconsin Educ. Assoc. Ins. Trust* v. *Iowa State Bd.,* 804 F.2d 1059, 1063 (8th Cir. 1986)).

[12] The Department has also recognized other circumstances when a person sponsoring a plan is acting as an ''employer'' indirectly rather than as an entity that underwrites benefits or provides administrative services. *See* Advisory Opinion 89–06A (Department would consider a member of a controlled group which establishes a benefit plan for its employees and/or the employees of other members of the controlled group to be an employer within the meaning of section 3(5) of ERISA); Advisory Opinion 95–29A (employee leasing company may act either directly or indirectly in the interest of an employer in establishing and maintaining employee benefit plan).

[13] *See* Advisory Opinion 2012–04A (holding that a group of employers can collectively act as the ''employer'' in sponsoring a multiple employer plan only if the employers group was formed for purposes other than the provision of benefits, the employers have a basic level of commonality (such as the participating employers all being in the same industry), and the employers participating in the plan in fact act as the ''employer'' by controlling the plan).

[14] *Travelers,* 514 U.S. at 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).

[15] In the Department's view, a state law that required employers to participate in a state prototype plan or state sponsored multiple employer plan unless they affirmatively opted out would effectively compel the employer to decide whether to sponsor an ERISA plan in a way that would be preempted by ERISA.

[16] The Court in *Travelers* approved a New York statute that gave employers a strong incentive to provide health care benefits through Blue Cross and Blue Shield as opposed to other providers. The Court noted that the law did not ''mandate'' employee benefit plans or their administration, or produce such acute economic effects, either directly or indirectly, by intent or otherwise ''as to force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers.'' *Travelers,* 514 U.S. at 668. *See also De Buono* v. *NYSA–ILA Medical and Clinical Services Fund,* 520 U.S. 806, 816 (1997).

to the same ERISA standards and remedies that apply to any company offering the same services to employers. Similarly, a prototype plan or multiple employer plan program that a state offers to employers would have to comply with the same ERISA requirements and would have to be subject to the same remedies as any private party offering such products and services.[17]

Even if the state laws enacted to establish programs of the sort described above ''reference'' employee benefit plans in a literal sense, they should not be seen as laws that ''relate to'' ERISA plans in the sense ERISA section 514(a) uses that statutory term because they are completely voluntary from the employer's perspective, the state program would be entirely subject to ERISA, and state law would not impose any outside regulatory requirements beyond ERISA. They do not require employers to establish ERISA-covered plans, forbid any type of plan or restrict employers' choices with respect to benefit structures or their administration. These laws would merely offer a program that employers could accept or reject. *See Dillingham,* 519 U.S. at 325–28.

In addition, none of the state approaches described above resemble the state laws that the Court held preempted in its pre-*Travelers* ''reference to'' cases. Those laws targeted ERISA plans as a class with affirmative requirements or special exemptions. *See, e.g., District of Columbia* v. *Greater Wash. Bd. of Trade,* 506 U.S. 125, 128, 129–133 (1992) (workers' compensation law that required employee benefits ''set by reference to [ERISA] plans'') (citation omitted); *Ingersoll-Rand Co.* v. *McClendon,* 498 U.S. 133, 135–136, 140 (1990) (common law claim for wrongful discharge to prevent attainment of ERISA benefits); *Mackey* v. *Lanier Collection Agency & Serv., Inc.,* 486 U.S. 825, 828 & n.2, 829–830 (1988) (exemption from garnishment statute for ERISA plans). In the case of the state actions outlined above, any restriction on private economic activity arises, not from state regulatory actions, but from the application of ERISA requirements to the plans, service providers, and investment products, that the state, as any other private sector participant in the market, selects in deciding what it is willing to offer.

Finally, it is worth noting that even if the state laws implementing these approaches ''relate to'' ERISA plans in some sense of that term, it is only because they create or authorize arrangements that are fully governed by ERISA's requirements. By embracing ERISA in this way, the state would not on that basis be running afoul of section 514(a) because ERISA fully applies to the arrangement and there is nothing in the state law for ERISA to ''supersede.'' In this regard, section 514(a) of ERISA, in relevant part, provides that Title I of ERISA ''shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan . . . .'' To the extent that the state makes plan design decisions in fashioning its prototype plan or state sponsored plan, or otherwise adopts rules necessary to run the plan, those actions would be the same as any other prototype plan provider or employer sponsor of any ERISA-covered plan, and the arrangement would be fully and equally subject to ERISA.

This conclusion is supported by the Department's position regarding state governmental participation in ERISA plans in another context. Pursuant to section 4(b)(1) of ERISA, the provisions of Title I of ERISA do not apply to a plan that a state government establishes for its own employees, which ERISA section 3(32) defines as a ''governmental plan.'' The Department has long held the view, however, that if a plan covering governmental employees fails to qualify as a governmental plan, it would still be subject to Title I of ERISA.[18] In these circumstances, the failure to qualify as a governmental plan does not prohibit a governmental employer from providing benefits through, and making contributions to, an ERISA-covered employee benefit plan.[19] Thus, the effect of ERISA is not to prohibit the state from offering benefits, but rather to make those benefits subject to ERISA. Here too, ERISA does not supersede state law to the extent it merely creates an arrangement that is fully governed by ERISA.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

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BILLING CODE 4510–29–P

[17] State laws relating to sovereign immunity for state governments and their employees would have to be evaluated carefully to ensure they do not conflict with ERISA's remedial provisions.

[18] *See, e.g.,* Advisory Opinion 2004–04A.

[19] *See* Information Letter to Michael T. Scaraggi and James M. Steinberg from John J. Canary (April 12, 2004).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2015–0318]

RIN 1625–AA00

Safety Zone; Turritella FPSO, Walker Ridge 551, Outer Continental Shelf on the Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Turritella FPSO system, Walker Ridge 551 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of the safety zone is to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Placing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: This rule is effective December 18, 2015.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–0318 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Rusty Wright, U.S. Coast Guard, District Eight Waterways Management Branch; telephone 504–671–2138, *rusty.h.wright@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS Department of Homeland Security
FR **Federal Register**
FPSO Floating Production Storage Offloading Vessel
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf
USCG United States Coast Guard

II. Background Information and Regulatory History

Shell Exploration & Production Company requested that the Coast Guard establish a safety zone around the Turritella FPSO, which is a ship-shaped offshore production facility that stores crude oil in tanks located in its hull. It will attach to a moored turret buoy and

Appendix G – Other States' Enabling Legislation

California

California LEGISLATIVE INFORMATION

SB-1234 Retirement savings plans. (2011-2012)

Senate Bill No. 1234

CHAPTER 734

An act to add Section 20139 to, and to add Title 21 (commencing with Section 100000) to, the Government Code, and to add Section 1088.9 to the Unemployment Insurance Code, relating to retirement savings plans, and making an appropriation therefor.

[Approved by Governor September 28, 2012. Filed with Secretary of State September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would enact the California Secure Choice Retirement Savings Trust Act, which would create the California Secure Choice Retirement Savings Trust to be administered by the California Secure Choice Retirement Savings Investment Board, which would also be established by the bill. The bill would require eligible employers, as defined, to offer a payroll deposit retirement savings arrangement so that eligible employees, as defined, could contribute a portion of their salary or wages to a retirement savings program account in the California Secure Choice Retirement Savings Program, as specified. The bill would require eligible employees to participate in the program, unless the employee opts out of the program, as specified. The bill would specify risk management and investment policies that the board would be subject to regarding administration of the program. The bill would require a specified percentage of the annual salary or wages of an eligible employee participating in the program to be deposited in the California Secure Choice Retirement Savings Trust, which would be segregated into a program fund and an administrative fund, both of which would be continuously appropriated to the board for purposes of the act. The bill would limit expenditures from the administrative fund, as specified. The bill would also authorize the board to establish a Gain and Loss Reserve Account within the program fund.

The bill would, contingent upon sufficient interest and funding by vendors, as specified, require the board to establish a Retirement Investments Clearinghouse on its Internet Web site and a vendor registration process through which information about employer-sponsored retirement plans, and payroll deduction individual retirement accounts and annuities offered by private sector providers is made available for consideration by eligible employers.

The bill would require the opt-out form disseminated by the Employment Development Department to be used to create an option for employees to elect to opt out of the program, as specified. The bill would, commencing 6 months after the program is ready to proceed, require the Employment Development Department to assess a penalty on any eligible employer that fails to make the program available to eligible employees, as specified. The bill also would make a statement of legislative findings. The bill would provide that the state would have no liability for the payment of the benefits under the program, as specified.

The bill, upon sufficient funds being made available through a nonprofit or private entity or federal funding, would require the board to conduct a market analysis to determine whether the necessary conditions for implementation can be met, as specified. The bill would require moneys made available to conduct the market analysis to be deposited in the Secure Choice Retirement Savings Program Fund which would be created in the State Treasury. The bill would provide that the operational provisions of the California Secure Choice Retirement Savings Trust Act shall be operative only if the board determines that, based on the market analysis, the provisions will be self-sustaining, and sufficient funds are made available through a nonprofit or private entity, federal funding, or the annual Budget Act, as specified, to allow the board to implement the program until the trust has sufficient funds to be self-sustaining.

The bill would require the board to ensure that an insurance, annuity, or other funding mechanism is in place at all times that protects the value of individuals' accounts and protects, indemnifies, and holds the state harmless at all times against any and all liability in connection with funding retirement benefits pursuant to these provisions.

The bill would prohibit the board from implementing the program if the IRA arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act of 1974.

Existing law establishes the Board of Administration of the Public Employees' Retirement System and vests the board with various powers and duties.

This bill would authorize that board to administer funds in the California Secure Choice Retirement Savings Trust, as specified.

Vote: majority   Appropriation: yes   Fiscal Committee: yes   Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares the following:

(a) California workers without access to an employer-sponsored retirement plan need a seamless, lifelong savings system, providing them with the opportunity to build their assets and helping them to attain their future financial stability through a program that offers secure and portable retirement savings.

(b) According to recent data by the University of California, Berkeley, Center for Labor Research and Education, middle class families in California are at significant risk of not having enough retirement income to meet even basic expenses, as nearly 50 percent of middle-income California workers will retire at or near poverty.

(c) The lack of sufficient retirement savings poses a significant threat to the state's already strained safety net programs and also threatens to undermine California's fiscal stability and ongoing economic recovery.

(d) The looming retirement security crisis exacerbates the state's high unemployment rate, as seniors are forced to work longer and fewer jobs are available for younger workers trying to enter the workforce.

(e) Providing California workers with a reliable retirement income to supplement social security is optimal to ensure that workers accumulate the savings they need for a secure retirement. Ideally, all private sector workers would have access to employer-sponsored retirement plans, but over 6.3 million California workers, 75 percent of whom earn less than $50,000 per year, do not have access to retirement savings opportunities through their jobs. When workers are offered the opportunity to save through their place of employment, they are significantly more likely to participate and make steady and systematic contributions to build their retirement savings. Establishing and offering a retirement savings program for workers without access to an employer-sponsored retirement plan or payroll deduction IRA would provide a vital supplement to social security income and would be an important step toward improving the retirement security of all working Californians.

(f) In creating an additional retirement savings program for its workers, California would supplement existing savings options, thus assisting California's working men and women to save for retirement. This program would be funded by the program's participants without incurring liabilities to the state.

(g) The California Secure Choice Retirement Savings Trust established by this act will promote expanded retirement security for working Californians.

(h) The implementation and effectuation of the California Secure Choice Retirement Savings Trust constitutes the carrying out of a valid and vital public purpose.

SEC. 2. Section 20139 is added to the Government Code, to read:

20139. The board shall have the power to administer funds in the California Secure Choice Retirement Savings Trust pursuant to a contract with the California Secure Choice Retirement Savings Investment Board as provided in Title 21 (commencing with Section 100000) and to help all California workers to plan and save for retirement.

SEC. 3. Title 21 (commencing with Section 100000) is added to the Government Code, to read:

TITLE 21. THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS TRUST ACT

100000. For purposes of this title, the following definitions shall apply:

(a) "Board" means the California Secure Choice Retirement Savings Investment Board.

(b) "California Secure Choice Retirement Savings Program" or "program" means a retirement savings program offered by the California Secure Choice Retirement Savings Trust.

(c) (1) "Eligible employee" means a person who is employed by an eligible employer.

(2) "Eligible employee" does not include:

(A) Any employee covered under the federal Railway Labor Act (45 U.S.C. Sec. 151), or any employee engaged in interstate commerce so as not to be subject to the legislative powers of the state, except insofar as application of this title is authorized under the United States Constitution or laws of the United States.

(B) Any employee covered by a valid collective bargaining agreement that expressly provides for a multiemployer Taft-Hartley pension plan.

(d) "Eligible employer" means a person or entity engaged in a business, industry, profession, trade, or other enterprise in the state, whether for profit or not for profit, excluding the federal government, the state, any county, any municipal corporation, or any of the state's units or instrumentalities, that has five or more employees and that satisfies the requirements to establish or participate in a payroll deposit retirement savings arrangement.

(e) "IRA" means an individual retirement account or individual retirement annuity under Section 408(a) or 408(b) of Title 26 of the United States Code.

(f) "Participating employer" means an eligible employer that provides a payroll deposit retirement savings arrangement provided for by this title for eligible employees.

(g) "Payroll deposit retirement savings arrangement" means an arrangement by which an employer allows employees to remit payroll deduction contributions to a retirement savings program.

(h) "Stated interest rate" means the rate of interest allocated to program accounts as determined by the board pursuant to subdivision (c) of Section 100008.

(i) "Trust" means the California Secure Choice Retirement Savings Trust established by this title.

(j) "Vendor" means a registered investment company or admitted life insurance company qualified to do business in California that provides retirement investment products. "Vendor" also includes a company that is registered to do business in California that provides payroll services or recordkeeping services and offers retirement plans or payroll deposit IRA arrangements using products of regulated investment companies and insurance companies qualified to do business in California. "Vendor" does not include individual registered representatives, brokers, financial planners, or agents.

100002. (a) (1) There is hereby created within state government the California Secure Choice Retirement Savings Investment Board, which shall consist of seven members, with the Treasurer serving as chair, as follows:

(A) The Treasurer.

(B) The Director of Finance, or his or her designee.

(C) The Controller.

(D) An individual with retirement savings and investment expertise appointed by the Senate Committee on Rules.

(E) A small business representative appointed by the Governor.

(F) A public member appointed by the Governor.

(G) An employee representative appointed by the Speaker of the Assembly.

(2) Members of the board appointed by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall serve at the pleasure of the appointing authority.

(b) All members of the board shall serve without compensation. Members of the board shall be reimbursed for necessary travel expenses incurred in connection with their board duties.

(c) A board member, program administrator, and other staff of the board shall not do any of the following:

(1) Directly or indirectly have any interest in the making of any investment made for the program, or in the gains or profits accruing from any investment made for the program.

(2) Borrow any funds or deposits of the trust, or use those funds or deposits in any manner, for himself or herself or as an agent or partner of others.

(3) Become an endorser, surety, or obligor on investments by the board.

(d) The board and the program administrator and staff shall discharge their duties with respect to the trust solely in the interest of the program participants as follows:

(1) For the exclusive purposes of providing benefits to program participants and defraying reasonable expenses of administering the program.

(2) By investing with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(e) (1) The board shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing.

(2) The investment policy shall adhere to the following guiding principles:

(A) The primary objective of the investment policy is to preserve the safety of principal and provide a stable and low-risk rate of return.

(B) The investment policy shall mitigate risk by maintaining a balanced investment portfolio that provides assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio.

(3) The following list represents the entire range of asset categories that the board may consider and the only types of investments which shall be permitted for the investment of funds:

(A) Domestic equities and international equities.

(B) Medium-term and long-term debt obligations of domestic corporations.

(C) United States government and government sponsored entity debt obligations.

(D) Real estate commingled funds that invest in publicly traded real estate securities.

(E) Money market instruments, cash, and money market mutual funds that are registered in the United States and denominated in United States dollars.

(F) Investments in mutual funds, but limited to existing, rated mutual funds, that are registered in the United States and denominated in United States dollars.

(G) Insurance agreements.

(H) FDIC-insured bank products.

(4) Equities shall not exceed 50 percent of the overall asset allocation of the fund.

(5) The investment policy shall also adhere to the following restrictions:

(A) Borrowing for investment purposes, or leverage, is prohibited.

(B) Instruments known as variable rate demand notes, floaters, inverse floaters, leveraged floaters, and equity-linked securities are not permitted. Investment in any instrument, which is commonly considered a "derivative" instrument, including, but not limited to, options, futures, swaps, caps, floors, and collars, is prohibited.

(C) Contracting to sell securities not yet acquired in order to purchase other securities for purposes of speculating on developments or trends in the market is prohibited.

(6) The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the California Secure Choice Retirement Savings Program investment portfolio and ensure that the risks taken are prudent and properly managed. The program shall be managed to provide an integrated process for overall risk management on both a consolidated and disaggregated basis, and to monitor investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards.

(f) The board shall approve an investment management entity or entities, the costs of which shall be paid out of funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust. Not later than 30 days after the close of each month, the board shall place on file for public inspection during business hours a report with respect to investments made pursuant to this section and a report of deposits in financial institutions. The investment manager shall report the following information to the board within 20 days following the end of the each month:

(1) The type of investment, name of the issuer, date of maturity, and the par and dollar amount invested in each security, investment, and money within the program fund.

(2) The weighted average maturity of the investments within the program fund.

(3) Any amounts in the program fund that are under the management of private money managers.

(4) Any amounts in the program fund that are under the management of the Board of Administration of the Public Employees' Retirement System.

(5) The market value as of the date of the report and the source of this valuation for each security within the program fund.

(6) A description of compliance with the statement of investment policy.

100004. (a) There is hereby established a retirement savings trust known as the California Secure Choice Retirement Savings Trust to be administered by the board for the purpose of promoting greater retirement savings for California private employees in a convenient, voluntary, low-cost, and portable manner. After sufficient funds are made available for this title to be operative pursuant to Section 100042, the California Secure Choice Retirement Savings Trust, as a self-sustaining trust, shall pay all costs of administration only out of moneys on deposit therein.

(b) The board shall segregate moneys received by the California Secure Choice Retirement Savings Trust into two funds, which shall be identified as the program fund and the administrative fund. Notwithstanding Section 13340, moneys in the trust are hereby continuously appropriated, without regard to fiscal years, to the board for the purposes of this title.

(c) Moneys in the program fund may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with the Board of Administration of the Public Employees' Retirement System or private money managers, or both, as determined by the board.

(d) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by this title. On an annual basis, expenditures from the administrative fund shall not exceed more than 1 percent of the total program fund. All costs of administration of the trust shall be paid out of the administrative fund. Operating costs associated with administering the trust do not include the procurement of private underwriting for the retirement savings' return.

(e) Any contributions paid by employees and employers into the trust shall be used exclusively for the purpose of paying benefits to the participants of the California Secure Choice Retirement Savings Program, for the cost of administration of the program, and for investments made for the benefit of the program.

100006. (a) The board may establish a segregated account within the program fund to be known as the Gain and Loss Reserve Account. The board shall have sole authority over the Gain and Loss Reserve Account, if established. The Gain and Loss Reserve Account may be used to allocate interest at the stated interest rate for program years in which the board determines that the stated interest rate cannot be met from investment earnings.

(b) The board shall establish a goal for the balance of the Gain and Loss Reserve Account and shall periodically review the sufficiency of the reserve account based on the recommendations of the board's actuary.

(c) The board may allocate excess earnings of the program with respect to assets attributable to the program to the Gain and Loss Reserve Account. In addition, the board may allocate any liability gains and losses to the Gain and Loss Reserve Account. Based on an actuarial valuation following each program year, the board shall determine annually the amount, if any, that is to be allocated to the Gain and Loss Reserve Account for that program year. In determining whether to allocate excess earnings to the Gain and Loss Reserve Account, the board shall consider all of the following:

(1) Whether or not the program has excess earnings.

(2) The sufficiency of the Gain and Loss Reserve Account in light of the goal established pursuant to subdivision (b).

(3) The amount required for the program's administrative costs.

(4) The amount required for making allocations to individuals' accounts at the stated interest rate.

(d) In determining whether to allocate liability gains and losses to the Gain and Loss Reserve Account, the board shall consider the matters described in paragraphs (2), (3), and (4) of subdivision (c).

100008. (a) The California Secure Choice Retirement Savings Program shall include, as determined by the board, one or more payroll deposit IRA arrangements.

(b) (1) Prior to July 1 of the initial program year, and prior to the beginning of each program year thereafter, the board shall adopt a program amendment in coordination with the investment management entity or entities with respect to the program to declare the stated rate at which interest shall be allocated to program accounts for the following program year.

(2) Interest shall be allocated to program accounts and shall be computed at the stated interest rate on the balance of an individual's account and shall be compounded daily.

(c) An individual's retirement savings benefit under the program shall be an amount equal to the balance in the individual's program account on the date the retirement savings benefit becomes payable.

100010. (a) The board, in the capacity of trustee, shall have the power and authority to do all of the following:

(1) Make and enter into contracts necessary for the administration of the trust.

(2) Adopt a seal and change and amend it from time to time.

(3) Cause moneys in the program fund to be held and invested and reinvested.

(4) Accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund.

(5) Appoint a program administrator, the costs of which shall be paid out of funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust, and determine the duties of the program administrator and other staff as necessary and set their compensation.

(6) Make provisions for the payment of costs of administration and operation of the trust.

(7) Employ staff.

(8) Retain and contract with the Board of Administration of the Public Employees' Retirement System, private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals as necessary.

(9) Procure insurance against any loss in connection with the property, assets, or activities of the trust, and secure private underwriting and reinsurance to manage risk and insure the retirement savings rate of return.

(10) Procure insurance indemnifying each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board.

(11) Set minimum and maximum investment levels in accordance with contribution limits set for IRAs by the Internal Revenue Code.

(12) Collaborate and cooperate with the Board of Administration of the Public Employees' Retirement System, private financial institutions, service providers, and business, financial, trade, membership, and other organizations to the extent necessary or desirable for the effective and efficient design, implementation, and administration of the program and to maximize outreach to eligible employers and eligible employees.

(13) Cause expenses incurred to initiate, implement, maintain, and administer the program to be paid from contributions to, or investment returns or assets of, the program or arrangements established under the program, to the extent permitted under state and federal law.

(14) Facilitate compliance by the retirement savings program or arrangements established under the program with all applicable requirements for the program under the Internal Revenue Code of 1986, including tax qualification requirements or any other applicable law and accounting requirements, including providing or arranging for assistance to program sponsors and individuals in complying with applicable law and tax qualification requirements in a cost-effective manner.

(15) Carry out the duties and obligations of the California Secure Choice Retirement Savings Trust pursuant to this title and exercise any and all other powers as may be reasonably necessary for the effectuation of the purposes, objectives, and provisions of this title pertaining to the trust.

(b) The board shall adopt regulations it deems necessary to implement this title consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.

100012. In addition to the powers and authority granted to the board pursuant to Section 100010, the board shall have the power and authority to do the following:

(a) Cause the retirement savings program or arrangements established under the program to be designed, established, and operated, in a manner consistent with all of the following:

(1) In accordance with best practices for retirement savings vehicles.

(2) To maximize participation, saving, and sound investment practices, and appropriate selection of default investments.

(3) With simplicity, ease of administration for participating employers, and portability of benefits.

(b) Arrange for collective, common, and pooled investment of assets of the retirement savings program or arrangements, including investments in conjunction with other funds with which those assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale.

(c) Explore and establish investment options that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the state.

(d) Disseminate educational information concerning saving and planning for retirement.

(e) Disseminate information concerning the tax credits available to small business owners for establishing new retirement plans and the federal Retirement Savings Contribution Credit (Saver's Credit) available to lower and moderate-income households for qualified savings contributions.

(f) Submit progress and status reports to participating employers and eligible employees.

(g) If necessary, determine the eligibility of an employer, employee, or other individual to participate in the program.

(h) Evaluate and establish the process by which an eligible employee of an eligible employer is able to contribute a portion of his or her salary or wages to the program for automatic deposit of those contributions and the participating employer provides a payroll deposit retirement savings arrangement to forward the employee contribution and related information to the program or its agents. This may include, but is not limited to, financial services companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or other arrangements authorized by this title.

(i) Design and establish the process for the enrollment of program participants.

(j) Allow participating employers to use the program to remit employees' contributions to their individual retirement accounts on their employees' behalf.

(k) Allow participating employers to make their own contributions to their employees' individual retirement accounts, provided that the contributions would be permitted under the Internal Revenue Code and would not cause the program to be treated as an employee benefit plan under the federal Employee Retirement Income Security Act.

(l) Evaluate and establish the process by which an individual or an employee of a nonparticipating employer may enroll in and make contributions to the program.

100013. The board shall ensure that an insurance, annuity, or other funding mechanism is in place at all times that protects the value of individuals' accounts. The funding mechanism shall protect, indemnify, and hold the state harmless at all times against any and all liability in connection with funding retirement benefits pursuant to this title. The costs of the funding mechanism shall be paid out of the funds held in the trust and shall not be attributed to the administrative costs of the board in operating the trust.

100014. (a) Prior to opening the California Secure Choice Retirement Savings Program for enrollment, the board shall design and disseminate to employers through the Employment Development Department (EDD) an employee information packet. The packet shall include background information on the program and appropriate disclosures for employees.

(b) The disclosure form shall include, but not be limited to, all of the following:

(1) The benefits and risks associated with making contributions to the program.

(2) The mechanics of how to make contributions to the program.

(3) How to opt out of the program.

(4) The process for withdrawal of retirement savings.

(5) How to obtain additional information on the program.

(c) In addition, the disclosure form shall clearly articulate the following:

(1) Employees seeking financial advice should contact financial advisors, that employers are not in a position to provide financial advice, and that employers are not liable for decisions employees make pursuant to Section 100034.

(2) The program is not an employer-sponsored retirement plan.

(3) The program fund is privately insured and is not guaranteed by the State of California.

(d) The disclosure form shall include a signature line for the employee to sign and date acknowledging that the employee has read all of the disclosures and understands their content.

(e) The employee information packet shall also include an opt-out form for an eligible employee to note his or her decision to opt out of participation in the program. The opt-out notation shall be simple and concise and drafted in a manner that the board deems necessary to appropriately evidence the employee's understanding that he or she is choosing not to automatically deduct earnings to save for retirement.

(f) The employee information packet shall be made available to employers through EDD and supplied to employees at the time of hiring. All new employees shall review the packet and acknowledge having read it by signing the signature line accompanied by the date of the signature.

(g) The employee information packet shall be supplied to existing employees when the program is initially launched for that participating employer pursuant to Section 100032 and employees shall review and sign the disclosure form at that time.

100016. (a) Prior to opening the California Secure Choice Retirement Savings Program for enrollment, if there is sufficient interest by vendors to participate and provide the necessary funding, the board shall establish both of the following:

(1) A Retirement Investments Clearinghouse on its Internet Web site.

(2) A vendor registration process through which information about employer-sponsored retirement plans, and payroll deduction IRAs offered by private sector providers is made available for consideration by eligible employers.

(b) Vendors that would like to participate in the board's Retirement Investments Clearinghouse and be listed on the board's Internet Web site as a registered vendor shall provide all of the following information:

(1) A statement of experience in California and in other states in providing employer-sponsored retirement plans, and payroll deduction IRAs.

(2) A description by the vendor of the types of retirement investment products offered.

(3) A disclosure of all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees, supported by documentation as required for prospectus disclosure by the National Association of Securities Dealers and the Securities and Exchange Commission. Vendors shall be required to provide information regarding the impact of product fees upon a hypothetical investment, as described in Section 100022.

(4) The types of products, product features, services offered to participants, and information about how to access product prospectuses or other relevant product information.

(5) A discussion of the ability, experience, and commitment of the vendor to provide retirement counseling and education services, including, but not limited to, access to group meetings and individual counseling by various means, including telephone and telecommunications devices for the deaf (TDD), Internet, and face-to-face consultations by registered representatives.

(6) A statement of the financial strength of the vendor by identifying its ratings assigned by nationally recognized rating services that evaluate the financial strength of similar companies.

(7) The location of offices and counselors, individual registered representatives, brokers, financial planners, agents, or other methods of distribution, of the vendor that would serve employers and their employees in California.

(8) A description of the ability of the vendor to comply with all applicable provisions of federal and state law governing retirement plans, including minimum distribution requirements and contribution limits.

(9) To the extent applicable, the demonstrated ability of the vendor to offer an appropriate array of accumulation funding options, including, but not limited to, investment options that offer guaranteed returns on contributions and the conversion of retirement savings account balances to secure retirement income, a diversified mix of value, growth, growth and income, hybrid, and index funds or accounts across large, medium, and small capitalization asset classes, both domestic and international.

(10) A discussion of the range of administrative and customer services provided, including asset allocation, accounting and administration of benefits for individual participants, recordkeeping for individual participants, asset purchase, control, and safekeeping, execution of a participant's instructions as to asset and contribution allocation, calculation of daily net asset values, direct access for participants to their account information, periodic reporting that is not less than quarterly to active participants on their account balances and transactions, and compliance with the standard of care consistent with federal law and applicable to the provision of investment services.

(11) Certification by the vendor that the information provided to the board accurately reflects the provisions of the retirement investment products it registers.

(c) Vendors shall supply information and data in the format prescribed by the board.

100018. Registration shall be offered to vendors once annually, and renewal of registration shall be required at least once every five years thereafter for vendors that wish to continue to participate in the Retirement Investments Clearinghouse. The board shall provide public notice prior to the initial registration, annual registration, and registration renewal periods.

100020. (a) The board may remove a vendor from the registry if the vendor submits materially inaccurate information to the board, does not remit assessed fees within 60 days, or fails to submit notice of material changes to its registered investment products. Vendors found to have submitted materially inaccurate information to the board shall be allowed 60 days to correct the information.

(b) The board shall remove a vendor from the registry if investments offered by the vendor are products of a regulated investment company or insurance company that is not licensed or has had its license revoked by the Financial Industry Regulatory Authority or the Department of Insurance for engaging in conduct prohibited by those entities.

(c) The board shall establish an appeals process for vendors that are denied registration or removed from the registry.

100022. (a) The board shall maintain the Retirement Investments Clearinghouse containing the information required in Section 100016 about the retirement investment products offered by each registered vendor and objective comparisons of vendors and types of products.

(b) The clearinghouse shall include information on investment performance based upon the investment's average annual total return as measured by a nationally recognized rating service selected by the board for standard periods of time of not less than one year.

(c) The board's Internet Web site shall include a table showing, for each registered fund, the total fee cost in dollars incurred by a shareholder who initially invested five thousand dollars ($5,000), earned a 5 percent rate of return for one-, five-, 10-, 15-, and 20-year time periods. This table shall be accompanied by a disclaimer that the rate of return is for purposes of illustrating the respective impacts of different fee amounts on each investment, and is not to predict future investment returns.

100024. The board shall include a notice of the existence of, and the Internet Web site address for, the Retirement Investments Clearinghouse in a notice disseminated to eligible employers through the Employment Development Department.

100026. A vendor may not charge a fee associated with a registered product that is not disclosed.

100028. (a) The actual cost of establishing the vendor registration system and the Retirement Investments Clearinghouse shall be borne equally by registered vendors, based on the total number of registered vendors. Each registered vendor shall pay a one-time establishment fee equal to a pro rata share of the establishment costs charged to vendors that register with the board prior to the close of the initial registration period, as determined by the board. The one-time establishment fee charged to vendors that register with the board after the completion of the initial registration period shall be distributed equally among registered vendors that have paid the establishment fee and credited toward subsequent maintenance and administrative fees charged to each vendor.

(b) The actual cost of maintaining the vendor registration system and the Retirement Investments Clearinghouse, and the costs associated with publicizing the availability of the clearinghouse to eligible employers, shall be borne equally by registered vendors, based on the total number of registered vendors. Each registered vendor shall pay a renewal fee equal to a pro rata share of the maintenance costs, as determined by the board.

(c) Each registered vendor shall pay an administrative fee for each retirement investment product it offers to employers, which shall represent the actual costs associated with processing the information related to the investment option and presenting it on the Retirement Investments Clearinghouse, as determined by the board.

(d) The board shall not divert California Secure Choice Retirement Savings Trust funds to establish or maintain the vendor registration system or the Retirement Investments Clearinghouse.

100030. (a) The board and the program, and its officers and employees, are not responsible for, and shall not be held liable for, the adequacy of the information provided by the participating vendors and contained in the clearinghouse. The clearinghouse maintained by the board serves only to provide information supplied by the participating vendors for the consideration of the selection of retirement investment products.

(b) Participating vendors shall not utilize the program's logo, or claim or infer endorsement or recommendation by the board or the program with respect to products and services identified by the vendors in the clearinghouse. At the discretion of the board, a violation of this section may lead to removal from the registry.

(c) The board and the program shall not be held liable for the actions of registered vendors.

100032. (a) After the board opens the California Secure Choice Retirement Savings Program for enrollment, any employer may choose to have a payroll deposit retirement savings arrangement to allow employee participation in the program.

(b) Beginning three months after the board opens the program for enrollment, eligible employers with more than 100 eligible employees and that do not offer an employer-sponsored retirement plan or automatic enrollment payroll deduction IRA shall have a payroll deposit retirement savings arrangement to allow employee participation in the program.

(c) Beginning six months after the board opens the program for enrollment, eligible employers with more than 50 eligible employees and that do not offer an employer-sponsored retirement plan or automatic enrollment payroll deduction IRA shall have a payroll deposit retirement savings arrangement to allow employee participation in the program.

(d) Beginning nine months after the board opens the program for enrollment, all other eligible employers that do not offer an employer-sponsored retirement plan or automatic enrollment payroll deduction IRA shall have a payroll deposit retirement savings arrangement to allow employee participation in the program.

(e) (1) Each eligible employee shall be enrolled in the program unless the employee elects not to participate in the program. An eligible employee may elect to opt out of the program by making a notation on the opt-out form.

(2) Following initial implementation of the program pursuant to this section, at least once every two years, participating employers shall designate an open enrollment period during which eligible employees that previously opted out of the program shall be enrolled in the program unless the employee again elects to opt out as provided in this subdivision.

(3) An employee who elects to opt out of the program who subsequently wants to participate through the employer's payroll deposit retirement savings arrangement may only enroll during the employer's designated open enrollment period or if permitted by the employer at an earlier time.

(f) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the California Secure Choice Retirement Savings Program.

(g) An eligible employee may also terminate his or her participation in the program at any time in a manner prescribed by the board and thereafter by making a notation on the opt-out form.

(h) Unless otherwise specified by the employee, a participating employee shall contribute 3 percent of the employee's annual salary or wages to the program.

(i) By regulation, the board may adjust the contribution amount set in subdivision (h) to no less than 2 percent and no more than 4 percent and may vary that amount within that 2 percent to 4 percent range for participating employees according to the length of time the employee has contributed to the program.

100034. (a) Employers shall not have any liability for an employee's decision to participate in, or opt out of, the California Secure Choice Retirement Savings Program, or for the investment decisions of employees whose assets are deposited in the program.

(b) Employers shall not be a fiduciary, or considered to be a fiduciary, over the California Secure Choice Retirement Savings Trust or the program. An employer shall not bear responsibility for the administration, investment, or investment performance of the program. An employer shall not be liable with regard to investment returns, program design, and benefits paid to program participants.

(c) An employer's voluntary contribution under subdivision (j) of Section 100012 shall not in any way contradict the provisions of this section or change the employer's relationship to the program or an employer's obligations to employees.

100036. The state shall not have any liability for the payment of the retirement savings benefit earned by program participants pursuant to this title. Any financial liability for the payment of benefits in excess of funds available under the program shall be borne by the entities with whom the board contracts to provide an insurance, annuity, or other funding mechanism to protect the value of individuals' accounts pursuant to Section 100013. The state, and any of the funds of the state, shall have no obligation for payment of the benefits arising from this title.

100038. (a) Notwithstanding Section 10231.5, the board shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the California Secure Choice Retirement Savings Trust by August 1 to the Governor, the Controller, the State Auditor, and the Legislature, pursuant to Section 9795. The annual audit shall be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

(b) The annual audit shall be supplemented by the following information prepared by the board:

(1) Any studies or evaluations prepared in the preceding year.

(2) A summary of the benefits provided by the trust including the number of participants in the trust.

(3) Any other information that is relevant in order to make a full, fair, and effective disclosure of the operations of the California Secure Choice Retirement Savings Trust.

100040. The board shall initially conduct a market analysis to determine whether the necessary conditions for implementation of this title can be met, including, but not limited to, likely participation rates, participants' comfort with various investment vehicles and degree of risk, contribution levels, and the rate of account closures and rollovers. The board shall conduct this analysis only if sufficient funds to initiate and complete the required market analysis are made available through a nonprofit or private entity, or from federal funding. The Secure Choice Retirement Savings Program Fund is hereby created in the State Treasury. Moneys made available to conduct the market analysis shall be deposited in this fund. The board shall forward and offer to present its findings to the Chair of the Senate Committee on Labor and Industrial Relations, the Chair of the Assembly Committee on Labor and Employment, the Chair of the Senate Committee on Public Employment and Retirement, and the Chair of the Assembly Committee on Public Employees, Retirement and Social Security.

100042. With the exceptions of subdivision (a) of Section 100002, and Sections 100040, 100043, and 100044, the provisions of this title shall become operative only if the board determines that, based on the market analysis, the provisions of this title will be self-sustaining, and funds are made available through a nonprofit or other private entity, federal funding, or an annual Budget Act appropriation in amounts sufficient to allow the board to implement this title until the trust has sufficient funds to be self-sustaining.

100043. The board shall not implement the program if the IRA arrangements offered fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code, or if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act.

100044. This title shall be construed liberally in order to effectuate its legislative intent. The purposes of this title and all of its provisions with respect to the powers granted shall be broadly interpreted to effectuate that intent and purposes and not as to any limitation of powers.

SEC. 4. Section 1088.9 is added to the Unemployment Insurance Code, to read:

1088.9. (a) The department shall have the power and duties necessary to administer the enforcement of employer compliance with Title 21 (commencing with Section 100000) of the Government Code.

(b) An eligible employer shall use the opt-out form in the employee information packet disseminated by the department to create an option for an eligible employee to note his or her decision to opt out of utilizing the California Secure Choice Retirement Savings Program.

(c) Each eligible employer that, without good cause, fails to allow its eligible employees to participate in the California Secure Choice Retirement Savings Program pursuant to Sections 100014 and 100032 of the Government Code, on or before 90 days after service of notice by the director pursuant to Section 1206 of its failure to comply, shall pay a penalty of two hundred fifty dollars ($250) per eligible employee if noncompliance extends 90 days or more after the notice, and if found to be in noncompliance 180 days or more after the notice, an additional penalty of five hundred dollars ($500) per eligible employee.

(d) The department shall enforce this penalty as part of its existing investigation and audit function.

(e) The provisions of this article, the provisions of Article 9 (commencing with Section 1176), with respect to refunds and overpayments, and the provisions of Article 11 (commencing with Section 1221), with respect to administrative appellate review shall apply to the penalty imposed by this section. Penalties collected pursuant to this section shall be deposited in the contingent fund.

(f) This section shall become operative six months after the board notifies the Director of Employment Development that the full implementation of Title 21 (commencing with Section 100000) of the Government Code will proceed. Upon receipt of the notification from the board, the department shall immediately post on its Internet Web site a notice stating that this section is operative, and the date that it is first operative.

(g) If the department participates in the implementation and administration of the program, it may charge the board a reasonable fee for costs it incurs for implementing and administering the program.

Connecticut

Substitute House Bill No. 5591

Public Act No. 16-29

AN ACT CREATING THE CONNECTICUT RETIREMENT SECURITY PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) As used in this section and sections 2 to 13, inclusive, of this act:

(1) "Authority" means the Connecticut Retirement Security Authority established pursuant to section 2 of this act;

(2) "Board" means the Connecticut Retirement Security Authority board of directors established pursuant to section 2 of this act;

(3) "Contribution level" means (A) the contribution rate selected by the participant that may be expressed as (i) a percentage of the participant's taxable wages as is required to be reported under Sections 6041 and 6051 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or (ii) a dollar amount up to the maximum deductible amount for the participant's taxable year under Section 219(b)(1) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time; or (B) in the absence of an affirmative election by the

participant, three per cent of the participant's taxable wages as is required to be reported under Sections 6041 and 6051 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or such other amount as determined by the authority, provided such amount shall not exceed six per cent. The contribution level of a participant who customarily and regularly receives gratuities in conjunction with his or her employment shall be a percentage of such participant's wages as is required to be reported under Sections 6041 and 6051 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time;

(4) "Covered employee" means an individual (A) who has been employed by a qualified employer for a period of not less than one hundred twenty days, (B) who is nineteen years of age or older, (C) who performs services within the state for purposes of section 31-222 of the general statutes, and (D) whose service or employment is not excluded under the provisions of subdivision (5) of subsection (a) of section 31-222 of the general statutes;

(5) "Participant" means any individual participating in the program;

(6) "Program" means the Connecticut Retirement Security Program established pursuant to section 3 of this act;

(7) "Qualified employer" means any person, corporation, limited liability company, firm, partnership, voluntary association, joint stock association or other entity doing business in the state during the calendar year, whether for profit or not for profit, that employed on October first of the preceding calendar year five or more individuals in the state and has paid not less than five of such individuals taxable wages of not less than five thousand dollars in the preceding calendar year. "Qualified employer" does not include: (A) The federal

government, (B) the state or any political subdivision thereof, (C) any municipality, unit of a municipality or municipal housing authority, (D) an employer employing only individuals whose services are excluded under subdivision (5) of subsection (a) of section 31-222 of the general statutes, or (E) an employer that was not in existence at all times during the current calendar year and the preceding calendar year;

(8) "Individual retirement account" means a Roth IRA;

(9) "Roth IRA" means an account described in Section 408A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time;

(10) "Normal retirement age" means the age specified in Section 408A of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, when an individual may withdraw all funds without penalty; and

(11) "Vendor" means (A) a regulated investment company or an insurance company conducting business in the state, or (B) a company conducting business in the state to (i) provide payroll or recordkeeping services, and (ii) offer retirement plans or payroll deposit individual retirement account arrangements using products of regulated investment companies. "Vendor" does not include individual registered representatives, brokers, financial planners or agents.

Sec. 2. (NEW) (*Effective from passage*) (a) There is hereby established and created a body politic and corporate, constituting a public instrumentality and political subdivision of the state of Connecticut established and created for the performance of an essential public and governmental function, to be known as the Connecticut Retirement

Security Authority. The authority shall not be construed to be a department, institution or agency of the state.

(b) The powers of the authority shall be vested in and exercised by a board of directors, which shall consist of nine voting members, each a resident of the state, (1) the State Treasurer who shall serve as an ex officio voting member; (2) the State Comptroller who shall serve as an ex officio voting member; (3) one appointed by the speaker of the House of Representatives, who shall have a favorable reputation for skill, knowledge and experience in the interests of the needs of aging population; (4) one appointed by the majority leader of the House of Representatives, who shall have a favorable reputation for skill, knowledge and experience in the interests of employers in retirement savings; (5) one appointed by the minority leader of the House of Representatives, who shall have a favorable reputation for skill, knowledge and experience in the interests of retirement investment products; (6) one appointed by the president pro tempore of the Senate, who shall have a favorable reputation for skill, knowledge and experience in the interests of employees in retirement savings; (7) one appointed by the majority leader of the Senate, who shall have a favorable reputation for skill, knowledge and experience in retirement plan designs; (8) one appointed by the minority leader of the Senate, who shall have a favorable reputation for skill, knowledge and experience in the interests of retirement plan brokers; and (9) one appointed by the Governor, who shall have a favorable reputation for skill, knowledge and experience in matters regarding the federal Employment Retirement Income Security Act of 1974, as amended from time to time, or the Internal Revenue Code of 1986 or any subsequent corresponding internal revenue code of the United States, as amended from time to time. Each member appointed pursuant to subdivisions (3) to (9), inclusive, of this subsection shall serve an initial term of four years. Thereafter, said members of the General Assembly and the Governor shall appoint members of the board to succeed such appointees whose terms expire and each member so appointed shall hold office for a term of six years from July first in the year of his or her appointment.

(c) All appointments to the board shall be made not later than July 31, 2016. Any vacancy shall be filled by the appointing authority not later than thirty calendar days after the office becomes vacant. Any member previously appointed to the board may be reappointed.

(d) The Governor, with the advice and consent of both houses of the General Assembly, shall select a chairperson of the board from among the members of the board. The board shall annually elect a vice-chairperson and such other officers as it deems necessary from among its members. The board may appoint an executive director and assistant executive director, who shall not be members of the board and who shall serve at the pleasure of the board. The executive director and assistant executive director shall be employees of the authority and shall receive such compensation as prescribed by the board.

(e) The members of the board shall serve without compensation but shall, within available appropriations, be reimbursed in accordance with the standard travel regulations for all necessary expenses that they may incur through service on the board.

(f) (1) Each member of the board shall, not later than ten calendar days after his or her appointment, take and subscribe the oath of affirmation required by article XI, section 1, of the State Constitution. Each member's term shall begin from the date the member takes such oath. The oath shall be administered by the Secretary of the State and shall be filed in the office of the Secretary of the State.

(2) Each member of the board authorized by resolution of the board to handle funds or sign checks for the program, and any other

authorized officer, shall, not later than ten calendar days after the date the board adopts such authorizing resolution, execute a surety bond in the penal sum of fifty thousand dollars or procure an equivalent insurance product or, in lieu thereof, the chairperson shall obtain a blanket position bond covering the executive director and every member of the board and other employee or authorized officer of the authority in the penal sum of fifty thousand dollars. Each such bond or equivalent insurance product shall be (A) conditioned upon the faithful performance of the duties of the chairperson or the members, executive director and other authorized officers or employees, as the case may be, and (B) issued by an insurance company authorized to transact business in the state as surety. The cost of each such bond shall be paid by the authority.

(g) An authorized officer or the executive director, if one is appointed by the board pursuant to subsection (d) of this section, shall supervise the administrative affairs and technical activities of the program in accordance with the directives of the board. Such authorized officer or executive director, as the case may be, shall keep a record of the proceedings of the program and shall be custodian of all books, documents and papers filed with the program, the minute book or journal of the program and its official seal. Such authorized officer or executive director, as the case may be, may cause copies to be made of all minutes and other records and documents of the program and may give certificates under the official seal of the program to the effect that such copies are true copies, and all persons dealing with the program may rely upon such certificates.

(h) Four members of the board shall constitute a quorum for the transaction of any business or the exercise of any power of the authority. Each member shall be entitled to one vote on the board.

(i) (1) No member of the board or any officer, agent or employee of the authority shall, directly or indirectly, have any financial interest in any corporation, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity contracting with the authority.

(2) Notwithstanding the provisions of subdivision (1) of this subsection or any other section of the general statutes, it shall not be a conflict of interest or a violation of the provisions of said subdivision or any other section of the general statutes for a trustee, director, officer or employee of a bank, investment advisor, investment company or investment banking firm, or a person having the required favorable reputation for skill, knowledge and experience in retirement savings, to serve as a member of the board, provided, in each case to which the provisions of this subdivision are applicable, such trustee, director, officer or employee of such a firm abstains from discussion, deliberation, action and vote by the board in specific respect to any undertaking pursuant to this section or sections 3 to 13, inclusive, of this act in which such firm has a direct interest separate from the interests of all similar firms generally.

(j) The board, on behalf of the authority, and for the purpose of implementing the Connecticut Retirement Security Program established pursuant to section 3 of this act, shall adopt written procedures in accordance with the provisions of section 1-121 of the general statutes for the purposes of:

(1) Adopting an annual budget and plan of operations, including a requirement of board approval before such budget or plan may take effect;

(2) Hiring, dismissing, promoting and compensating employees of the authority, instituting an affirmative action policy and requiring board approval before a position may be created or a vacancy filled;

(3) Acquiring real and personal property and personal services,

including requiring board approval for any nonbudgeted expenditure in excess of five thousand dollars;

(4) Contracting for financial, legal and other professional services, and requiring that the authority solicit proposals not less than every three years for each such service used by the board or authority, except for any firm that contracts to provide custodial, recordkeeping or other services for the provision of an individual retirement account such solicitation shall be not less than every ten years;

(5) Using surplus funds to the extent authorized under this act or other provisions of the general statutes;

(6) Making modifications to the program that the board deems necessary to implement the provisions of sections 2 to 13, inclusive, of this act consistent with federal rules and regulations in order to ensure that the program meets all criteria for federal tax-deferral or tax-exempt benefits, and to prevent the program from being treated as an employee benefit plan under the federal Employee Retirement Income Security Act of 1974, as amended from time to time; and

(7) Establishing an administrative process by which participants, potential participants and employees may submit grievances, complaints and appeals to the board and have such grievances, complaints and appeals heard and addressed by the board.

(k) The authority shall continue as long as the program remains in effect and until its existence is terminated by law. Upon termination of the existence of the authority, all its rights and properties shall pass to and be vested in the state of Connecticut.

(l) The provisions of this section and section 1-125 of the general statutes, as amended by this act, shall apply to any member, director or employee of the authority. No person shall be subject to civil liability for the debts, obligations or liabilities of the authority as provided in this section and section 1-125 of the general statutes, as amended by this act.

Sec. 3. (NEW) (*Effective from passage*) (a) There is established the Connecticut Retirement Security Program the purpose of which shall be to promote and enhance retirement savings for private sector employees in the state. The board of directors of the Connecticut Retirement Security Authority may:

(1) Adopt bylaws for the regulation of the affairs of the board and the conduct of its business;

(2) Adopt an official seal and alter the same at the pleasure of the board;

(3) Maintain an office at such place or places in the state as the board may designate;

(4) Sue and be sued in its own name;

(5) Establish criteria and guidelines for the retirement programs to be offered pursuant to this section and sections 4 to 13 of this act;

(6) Receive and invest moneys in the program in any instruments, obligations, securities or property in accordance with section 8 of this act;

(7) Contract with financial institutions or other organizations offering or servicing retirement programs. The authority may require that each participant be charged a fee to defray the costs of the program. The amount and method of collection of such fee shall be determined by the authority. No employer shall be required to fund or be responsible for collecting fees from plan participants;

(8) Employ attorneys, accountants, consultants, financial experts, loan processors, banks, managers and such other employees and

agents as may be necessary in the board's judgment, and to fix the compensation of such individuals;

(9) Charge and equitably apportion among participants the administrative costs and expenses incurred in the exercise of the board's powers and duties as granted by this section;

(10) Borrow working capital funds and other funds as may be necessary for the start-up and continuing operation of the program, provided such funds are borrowed in the name of the authority only. Such borrowings shall be payable solely from revenues of the authority;

(11) Make and enter into contracts or agreements with professional service providers, including, but not limited to, financial consultants and lawyers, as may be necessary or incidental to the performance of the board's duties and the execution of its powers under this section;

(12) Establish policies and procedures for the protection of program participants' personal and confidential information; and

(13) Do all things necessary or convenient to carry out the provisions of sections 2 to 13, inclusive, of this act.

(b) The board of directors of the Connecticut Retirement Security Authority shall enter into memoranda of understanding with the Labor Department and other state agencies regarding (1) the gathering or dissemination of information necessary for the operations of the program, subject to such obligations of confidentiality as may be agreed or required by law, (2) the sharing of costs incurred pursuant to the gathering and dissemination of such information, and (3) the reimbursement of costs for any enforcement activities conducted pursuant to section 10 of this act. Each state agency may also enter into such memoranda of understanding.

Sec. 4. (NEW) (*Effective from passage*) (a) The Connecticut Retirement Security Authority board of directors shall prepare informational materials regarding the Connecticut Retirement Security Program for distribution by qualified employers to plan participants and prospective plan participants pursuant to section 7 of this act. Such informational materials shall include, but need not be limited to:

(1) The benefits and risks associated with making contributions to or making withdrawals from the program;

(2) The process for making contributions to the program, including a contribution election form;

(3) Clear and conspicuous notice regarding the default contribution level;

(4) The process by which a participant may opt out of the program by electing a contribution level of zero;

(5) A description of applicable federal and state regulations, including income and contribution limits for participating in the program;

(6) The process for withdrawing retirement savings from the program, including an explanation of the tax treatment of withdrawals;

(7) The process by which a participant may obtain additional information on the program, including information regarding investment options available under the program; and

(8) Such other information as the board may deem necessary or advisable to provide to participants, potential participants and qualified employers in the state.

(b) Not less than quarterly, the board shall provide a statement to each participant that shall include, but need not be limited to, the following information:

(1) The account balance in a participant's individual retirement account, including the value of the participant's investment in each investment option selected by the participant;

(2) The various investment options available to each participant and the process by which a participant may select investment options for his or her contributions in accordance with subsection (b) of section 31-71j of the general statutes, as amended by this act, or as prescribed by the authority;

(3) The amount of fees charged to each participant's individual retirement account and a description of the services to which such charges relate; and

(4) At the election of the board, an estimate of the amount of income the account is projected to generate for a participant's retirement based on reasonable assumptions.

(c) Not less than annually, the board shall provide each participant with notification regarding fees that may be imposed through the program and information regarding the various investment options that may be available to participants. The board may provide such notification and information in the form of a prospectus or similar document.

(d) The board, on behalf of the authority, may adopt policies and procedures in accordance with the provisions of section 1-121 of the general statutes for the electronic dissemination of any notices or information required to be provided to participants, potential participants and qualified employers pursuant to the provisions of this section.

Sec. 5. (NEW) (*Effective from passage*) (a) The Connecticut Retirement Security Program shall provide for the establishment and maintenance of an individual retirement account for each program participant. Such individual retirement account shall be established and maintained through the program or a third-party entity in the business of establishing and maintaining individual retirement accounts. Program assets shall be held in trust or custodial accounts meeting the requirements of Section 408(a) or (c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or any other applicable federal law requirements.

(b) Interest, investment earnings and investment losses shall be allocated to each participant's individual retirement account. A participant's benefit under the program shall be equal to the balance in such participant's individual retirement account as of any applicable measurement date prescribed by the program.

(c) The Connecticut Retirement Security Authority shall establish, or cause to be established, processes to prevent a participant's contributions to the program from exceeding the maximum amount of deduction under 26 USC 219(b)(1) for the participant's tax year.

(d) The state shall not be liable for the payment of any benefit to any participant or beneficiary of any participant and shall not be liable for any liability or obligation of the authority. The authority shall not be liable for the payment of any benefit to any participant or beneficiary of any participant, except with respect to any individual retirement accounts established and maintained by the authority.

(e) Any unclaimed funds in a participant's individual retirement account shall be governed by section 3-57a of the general statutes.

Sec. 6. (NEW) (*Effective from passage*) (a) The Connecticut Retirement

Security Authority board of directors, in conducting the business of the authority, including its oversight functions, shall act: (1) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; (2) solely in the interests of the program's participants and beneficiaries; (3) for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the program; and (4) in accordance with the provisions of sections 2 to 13, inclusive, of this act and any other applicable sections of the general statutes.

(b) The board shall, to the extent reasonable and practicable, require any agents engaged or appointed by the authority to abide by the standard of care described in subsection (a) of this section.

Sec. 7. (NEW) (*Effective from passage*) (a) (1) Not later than January 1, 2018, and annually thereafter, each qualified employer shall provide each of its covered employees with the informational materials prepared by the Connecticut Retirement Security Authority board of directors pursuant to section 4 of this act. For any employee of a qualified employer who (A) is hired on or after January 1, 2018, or (B) does not meet the definition of covered employee pursuant to section 1 of this act, such qualified employer shall provide such informational materials to such employee not later than thirty days, or such other time period as prescribed by the authority, after (i) the date of such employee's hiring, or (ii) the date such employee meets the definition of covered employee pursuant to section 1 of this act.

(2) Not later than sixty days after a qualified employer provides informational materials to a covered employee in accordance with subsection (a) of this section, or such other time period as prescribed by the authority, and subject to the provisions of subdivision (3) of this subsection, such qualified employer shall automatically enroll each of

its covered employees in the program at the participant's contribution level in accordance with the provisions of section 31-71j of the general statutes, as amended by this act.

(3) A covered employee may opt out of the program by electing a contribution level of zero.

(4) (A) A qualified employer that (i) maintains a retirement plan or retirement arrangement described under Section 219(g)(5) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or (ii) any other retirement arrangement approved by the authority, shall be exempt from the requirements of subdivisions (1) and (2) of this subsection.

(B) A qualified employer shall not be considered to maintain a retirement plan or retirement arrangement described under said Section 219(g)(5) or any other retirement arrangement approved by the authority pursuant to subparagraph (A) of this subdivision, if the authority determines that (i) as of the first day of the previous calendar year, no new participant was eligible to be enrolled in a retirement plan or retirement arrangement maintained by such qualified employer, and (ii) on and after the first day of the previous calendar year, no contributions were made to such retirement plan or retirement arrangement by or on behalf of a participant in such plan or arrangement.

(5) The authority may defer the effective date of the program, in whole or in part, and for particular categories of employers, as the authority deems necessary to effectuate the purposes of sections 2 to 13, inclusive, of this act in a manner that minimizes the disruption and burdens that may exist for any qualified employer. The board shall provide notice of any deferment of the effective date of the program to the chairpersons and ranking members of the joint standing committee

of the General Assembly having cognizance of matters relating to labor not later than seven days after the authority has deemed such deferment necessary. Such notice shall include the categories of employers affected, the purpose for which the deferment was granted and the new effective date of the program.

(b) An employer that does not otherwise meet the definition of a qualified employer may make the program available to its employees subject to such rules and procedures as may be prescribed by the authority. No such employer shall require any employee to enroll in the program.

(c) Any individual who is not enrolled in the program pursuant to subsection (a) of this section may participate in the program at any time subject to such rules and procedures as the authority may prescribe. The authority shall provide the informational materials described in section 4 of this act to any such individual at or before the time of such individual's enrollment in the program.

(d) To the extent permitted under the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, the authority shall allow any individual to establish or contribute to an individual retirement account maintained for such individual under the program by rolling over funds from an existing retirement savings account of the individual.

(e) A qualified employer that withholds a contribution from a covered employee's compensation in connection with the program shall transmit such contribution on the earliest date the amount withheld from the covered employee's compensation can reasonably be segregated from the qualified employer's assets, but not later than the fifteenth business day of the month following the month in which the covered employee's contribution amounts are withheld from his or her paycheck.

(f) No employer shall be permitted to make a contribution to the program.

(g) The board shall disseminate information concerning the tax credits that may be available to small business owners for establishing new retirement plans.

Sec. 8. (NEW) (*Effective from passage*) The Connecticut Retirement Security Authority shall provide for each participant's account to be invested in (1) an age-appropriate target date fund, except as provided in subsection (b) of section 9 of this act, or (2) such other investment vehicles as the authority may prescribe.

Sec. 9. (NEW) (*Effective from passage*) (a) The Connecticut Retirement Security Authority shall establish rules and procedures governing the distribution of funds from the program. Such rules and procedures shall allow for such distributions as may be permitted or required by the program and any applicable provisions of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

(b) The program shall include the following design features prescribed by the authority, provided the authority determines such features to be feasible and cost effective:

(1) Designate a lifetime income investment for the program intended to provide participants with a source of retirement income for life. Any lifetime income investment for the program shall include spousal rights;

(2) Provide to each participant, one year in advance of the participant's normal retirement age, a disclosure explaining (A) the rights and features of the lifetime income investment; (B) that once the

participant reaches normal retirement age, fifty per cent of the participant's account will be invested in the lifetime income investment; and (C) that the participant may elect to invest a higher percentage of his or her account balance in the lifetime income option;

(3) On the date a participant reaches his or her normal retirement age, invest fifty per cent of the participant's account balance, or such higher amount as specified by the participant, in the lifetime income investment;

(4) Permit each participant to elect a date not earlier than his or her normal retirement age on which to begin receiving distributions, provided, in the absence of an election, such distributions shall commence not later than ninety days after the participant reaches his or her normal retirement age; and

(5) Establish procedures whereby each participant may elect to invest a higher percentage of his or her account balance in the lifetime income investment.

(c) The board shall inform participants about their rights to withdraw funds from the program in accordance with the provisions of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time. For participants who elect to withdraw their assets prior to their normal retirement age, the authority shall notify such participants of any tax penalties associated with such withdrawal and the effect of such withdrawal on such participant's expected retirement income.

Sec. 10. (NEW) (*Effective from passage*) (a) The Attorney General may investigate any violation of section 6 of this act. If the Attorney General finds that any member of the Connecticut Retirement Security Authority board of directors, or any agent engaged or appointed by the board or the authority has violated or is violating any provision of said section, the Attorney General may bring a civil action in the superior court for the judicial district of Hartford under this section in the name of the state against such member or agent. The remedies available to a court in any such action shall be limited to injunctive relief. Nothing in this section shall be construed to create a private right of action.

(b) If a qualified employer fails to remit contributions to the program in the time period specified in subsection (e) of section 7 of this act, such failure to remit such contributions shall be a violation of section 31-71e of the general statutes, as amended by this act.

(c) If a qualified employer fails to enroll a covered employee as required under subsection (a) of section 7 of this act, such covered employee, or the Labor Commissioner, may bring a civil action to require the qualified employer to enroll the covered employee and shall recover such costs and reasonable attorney's fees as may be allowed by the court.

Sec. 11. (NEW) (*Effective from passage*) (a) The Connecticut Retirement Security Authority shall keep an accurate account of all its activities, receipts and expenditures and shall submit, in accordance with the provisions of section 11-4a of the general statutes, a report detailing such activities, receipts and expenditures to the Connecticut Retirement Security Authority board of directors, the Governor, the Office of Auditors of Public Accounts and the joint standing committees of the General Assembly having cognizance of matters relating to labor and finance, revenue and bonding on or before December thirty-first annually. Such report shall be in a form prescribed by the board and shall include projected activities of the authority for the next fiscal year and shall be subject to approval by the Auditors of Public Accounts.

(b) The Auditors of Public Accounts may conduct a full audit of the books and accounts of the authority pertaining to such activities, receipts and expenditures, personnel, services or facilities, in accordance with the provisions of section 2-90 of the general statutes. For the purposes of such audit, the Auditors of Public Accounts shall have access to the properties and records of the authority, and may prescribe methods of accounting and the rendering of periodical reports in relation to projects undertaken by the authority.

(c) The authority shall enter into memoranda of understanding with the State Comptroller pursuant to which the authority shall provide, in such form and manner as prescribed by the State Comptroller, information that may include, but need not be limited to, the current revenues and expenses of the authority, the sources or recipients of such revenues or expenses, the date such revenues or expenses were received or dispersed and the amount and the category of such revenues or expenses. The State Comptroller may also enter into such memoranda of understanding.

Sec. 12. (*Effective from passage*) (a) The Connecticut Retirement Security Board shall conduct a study of the interest of participants and potential participants of the Connecticut Retirement Security Program in investing in a traditional IRA option. The study shall include, but need not be limited to: (1) The number of participants and potential participants whose incomes exceed federal limits for contributing to a Roth IRA; and (2) the percentage of current participants that would prefer a tax-deferred savings option. Not later than January 1, 2019, the board shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, on the results of such study to the joint standing committee of the General Assembly having cognizance of matters relating to labor.

(b) The Connecticut Retirement Security Authority may study the feasibility of the state or the authority making available to employers a multiple-employer 401(k) plan or other tax-favored retirement savings vehicle.

Sec. 13. (NEW) (*Effective January 1, 2018*) (a) The Connecticut Retirement Security Authority board of directors shall:

(1) Establish and maintain a secure Internet web site to (A) provide qualified employers with information regarding employer-sponsored retirement plans and payroll deduction individual retirement accounts, and (B) assist qualified employers in identifying vendors of retirement arrangements that may be implemented by the qualified employers in lieu of participation in the program;

(2) Include the Internet web site address on any posting to the Internet web site or in other materials offered to the public regarding the program;

(3) Prior to implementing the Internet web site, and at least annually thereafter, provide notice to vendors (A) that such Internet web site is active, (B) that such vendors may register for inclusion on the Internet web site, and (C) regarding the process for inclusion on the Internet web site; and

(4) Establish an appeals process for vendors that are denied registration or removed from the Internet web site pursuant to subsection (d) of this section.

(b) Each vendor that registers to be listed on the Internet web site shall provide: (1) A statement of such vendor's experience providing employer-sponsored retirement plans and payroll deduction individual retirement accounts in this state and in other states, if applicable, (2) a description of the types of retirement investment products offered by such vendor, and (3) a disclosure of all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees and annual fees.

(c) The cost of establishing and maintaining the registration system and the Internet web site shall be borne solely and equally by registered vendors, based upon the total number of registered vendors.

(d) The board may remove a vendor from the Internet web site if the vendor: (1) Submits materially inaccurate information to the board, (2) does not remit assessed fees within sixty days from the date of assessment, or (3) fails to submit to the board notice of any material change to the vendor's registered investment products. Any vendor found to have submitted materially inaccurate information to the board shall be allowed sixty calendar days to correct the information.

Sec. 14. Subdivision (12) of section 1-79 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(12) "Quasi-public agency" means Connecticut Innovations, Incorporated, the Connecticut Health and Education Facilities Authority, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the State Housing Authority, the Materials Innovation and Recycling Authority, the Capital Region Development Authority, the Connecticut Lottery Corporation, the Connecticut Airport Authority, the Connecticut Health Insurance Exchange, the Connecticut Green Bank, <u>the Connecticut Retirement Security Authority,</u> the Connecticut Port Authority and the State Education Resource Center.

Sec. 15. Subdivision (1) of section 1-120 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(1) "Quasi-public agency" means Connecticut Innovations, Incorporated, the Connecticut Health and Educational Facilities Authority, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the Connecticut Housing Authority, the Materials Innovation and Recycling Authority, the Capital Region Development Authority, the Connecticut Lottery Corporation, the Connecticut Airport Authority, the Connecticut Health Insurance Exchange, the Connecticut Green Bank, the Connecticut Retirement Security Authority, the Connecticut Port Authority and the State Education Resource Center.

Sec. 16. Section 1-124 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(a) Connecticut Innovations, Incorporated, the Connecticut Health and Educational Facilities Authority, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the Connecticut Housing Authority, the Materials Innovation and Recycling Authority, the Connecticut Airport Authority, the Capital Region Development Authority, the Connecticut Health Insurance Exchange, the Connecticut Green Bank, the Connecticut Retirement Security Authority, the Connecticut Port Authority and the State Education Resource Center shall not borrow any money or issue any bonds or notes which are guaranteed by the state of Connecticut or for which there is a capital reserve fund of any kind which is in any way contributed to or guaranteed by the state of Connecticut until and unless such borrowing or issuance is approved by the State Treasurer or the Deputy State Treasurer appointed pursuant to section 3-12. The approval of the State Treasurer or said deputy shall be based on documentation provided by the authority that it has sufficient revenues to (1) pay the principal of and interest on the bonds and notes issued, (2) establish, increase and maintain any reserves deemed by the authority to be advisable to secure the payment of the principal of and interest on such bonds and notes, (3) pay the cost of maintaining, servicing and properly insuring the purpose for which the proceeds of the bonds and notes have been issued, if applicable, and (4) pay such other costs as may be required.

(b) To the extent Connecticut Innovations, Incorporated, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the Connecticut Housing Authority, the Materials Innovation and Recycling Authority, the Connecticut Health and Educational Facilities Authority, the Connecticut Airport Authority, the Capital Region Development Authority, the Connecticut Health Insurance Exchange, the Connecticut Green Bank, <u>the Connecticut Retirement Security Authority,</u> the Connecticut Port Authority or the State Education Resource Center is permitted by statute and determines to exercise any power to moderate interest rate fluctuations or enter into any investment or program of investment or contract respecting interest rates, currency, cash flow or other similar agreement, including, but not limited to, interest rate or currency swap agreements, the effect of which is to subject a capital reserve fund which is in any way contributed to or guaranteed by the state of Connecticut, to potential liability, such determination shall not be effective until and unless the State Treasurer or his or her deputy appointed pursuant to section 3-12 has approved such agreement or agreements. The approval of the State Treasurer or his or her deputy shall be based on documentation provided by the authority that it has sufficient revenues to meet the financial obligations associated with the agreement or agreements.

Sec. 17. Section 1-125 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

The directors, officers and employees of Connecticut Innovations, Incorporated, the Connecticut Higher Education Supplemental Loan Authority, the Connecticut Student Loan Foundation, the Connecticut Housing Finance Authority, the Connecticut Housing Authority, the Materials Innovation and Recycling Authority, including ad hoc members of the Materials Innovation and Recycling Authority, the Connecticut Health and Educational Facilities Authority, the Capital Region Development Authority, the Connecticut Airport Authority, the Connecticut Lottery Corporation, the Connecticut Health Insurance Exchange, the Connecticut Green Bank, the Connecticut Retirement Security Authority, the Connecticut Port Authority and the State Education Resource Center and any person executing the bonds or notes of the agency shall not be liable personally on such bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof, nor shall any director or employee of the agency, including ad hoc members of the Materials Innovation and Recycling Authority, be personally liable for damage or injury, not wanton, reckless, wilful or malicious, caused in the performance of his or her duties and within the scope of his or her employment or appointment as such director, officer or employee, including ad hoc members of the Materials Innovation and Recycling Authority. The agency shall protect, save harmless and indemnify its directors, officers or employees, including ad hoc members of the Materials Innovation and Recycling Authority, from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, suit or judgment by reason of alleged negligence or alleged deprivation of any person's civil rights or any other act or omission resulting in damage or injury, if the director, officer or employee, including ad hoc members of the Materials Innovation and Recycling Authority, is found to have been acting in the discharge of his or her duties or within the scope of his or her employment and such act or omission is found not to have been wanton, reckless, wilful or malicious.

Sec. 18. Section 31-71e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

No employer may withhold or divert any portion of an employee's wages unless (1) the employer is required or empowered to do so by state or federal law, or (2) the employer has written authorization from the employee for deductions on a form approved by the commissioner, or (3) the deductions are authorized by the employee, in writing, for medical, surgical or hospital care or service, without financial benefit to the employer and recorded in the employer's wage record book, or (4) the deductions are for contributions attributable to automatic enrollment, as defined in section 31-71j, <u>as amended by this act,</u> in a retirement plan described in Section 401(k), 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, established by the employer, <u>or in the Connecticut Retirement Security Program established pursuant to section 3 of this act,</u> or (5) the employer is required under the law of another state to withhold income tax of such other state with respect to (A) employees performing services of the employer in such other state, or (B) employees residing in such other state.

Sec. 19. Section 31-71j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(a) As used in this section: (1) "Automatic enrollment" means a plan provision in an employee retirement plan described in Section 401(k) or 403(b) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or a governmental deferred compensation plan described in Section 457 of said Internal Revenue Code, or a payroll deduction Individual Retirement Account plan described in Section 408 or 408A of said Internal Revenue Code<u>, or the Connecticut Retirement Security Program established pursuant to section 3 of this act,</u> under which an employee is treated as having elected to have the employer make a specified contribution to the plan equal to a percentage of compensation specified in the plan until such employee affirmatively elects to not have such contribution made or elects to make a contribution in another amount; and (2) "automatic contribution arrangement" means an arrangement under an automatic enrollment plan under which, in the absence of an investment election by the participating employee, contributions made under such plan are invested in accordance with regulations prescribed by the United States Secretary of Labor under Section 404(c)(5) of the Employee Retirement Income Security Act of 1974, as amended from time to time.

(b) Any employer who provides automatic enrollment shall be relieved of liability for the investment decisions made by the employer <u>or the Connecticut Retirement Security Authority pursuant to section 8 of this act</u> on behalf of any participating employee under an automatic contribution arrangement, provided:

(1) The plan allows the participating employee at least quarterly opportunities to select investments for the employee's contributions between investment alternatives available under the plan;

(2) The employee is given notice of the investment decisions that will be made in the absence of the employee's direction, a description of all the investment alternatives available under the plan and a brief description of procedures available for the employee to change investments; and

(3) The employee is given at least annual notice of the actual

investments made on behalf of the employee under such automatic contribution arrangement.

(c) Nothing in this section shall modify any existing responsibility of employers or other plan officials for the selection of investment funds for participating employees.

(d) The relief from liability of the employer under this section shall extend to any other plan official who actually makes the investment decisions on behalf of participating employees under an automatic contribution arrangement.

Sec. 20. (NEW) (*Effective from passage*) (a) No member of the Connecticut Retirement Security Authority board of directors, except the State Comptroller or State Treasurer, or any executive director, assistant executive director or authorized officer appointed by said board or the principal of an entity with a contract with the authority to administer the Connecticut Retirement Security Program, shall make a contribution to, or knowingly solicit contributions from the board's or the executive director's or assistant executive director's employees on behalf of (1) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (2) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (3) a party committee.

(b) No member of the Connecticut Retirement Security Authority board of directors, except the State Comptroller or State Treasurer, or any executive director, assistant executive director or authorized officer appointed by said board or the principal of any entity with a contract with the authority to administer the program shall make a contribution to, or knowingly solicit contributions from the board's or the executive director's or assistant executive director's employees on behalf of (1) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative, (2) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (3) a party committee.

(c) The provisions of this section and sections 1 to 19, inclusive, of this act, shall be severable, and, if any of their provisions are held to be unconstitutional or invalid, the validity of the remaining provisions of said sections will not be affected.

Sec. 21. Sections 31-410 to 31-415, inclusive, of the general statutes are repealed. (*Effective July 1, 2016*)

Approved May 27, 2016

Illinois

AN ACT concerning State government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Secure Choice Savings Program Act.

Section 5. Definitions. Unless the context requires a different meaning or as expressly provided in this Section, all terms shall have the same meaning as when used in a comparable context in the Internal Revenue Code. As used in this Act:

"Board" means the Illinois Secure Choice Savings Board established under this Act.

"Department" means the Department of Revenue.

"Director" means the Director of Revenue.

"Employee" means any individual who is 18 years of age or older, who is employed by an employer, and who has wages that are allocable to Illinois during a calendar year under the provisions of Section 304(a)(2)(B) of the Illinois Income Tax Act.

"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.

"Enrollee" means any employee who is enrolled in the Program.

"Fund" means the Illinois Secure Choice Savings Program Fund.

"Internal Revenue Code" means Internal Revenue Code of 1986, or any successor law, in effect for the calendar year.

"IRA" means a Roth IRA (individual retirement account) under Section 408A of the Internal Revenue Code.

"Participating employer" means an employer or small employer that provides a payroll deposit retirement savings arrangement as provided for by this Act for its employees who are enrollees in the Program.

"Payroll deposit retirement savings arrangement" means an arrangement by which a participating employer allows enrollees to remit payroll deduction contributions to the Program.

"Program" means the Illinois Secure Choice Savings Program.

"Small 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) employed less than 25 employees at any one time in the State throughout the previous calendar year, or (ii) has been in business less than 2 years, or both items (i) and (ii), but that notifies the Department that it is interested in being a participating employer.

"Wages" means any compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by an enrollee from a participating employer during the calendar year.

Section 10. Establishment of Illinois Secure Choice Savings Program. A retirement savings program in the form of an automatic enrollment payroll deduction IRA, known as the Illinois Secure Choice Savings Program, is hereby established and shall be administered by the Board for the purpose of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner.

Section 15. Illinois Secure Choice Savings Program Fund.

(a) The Illinois Secure Choice Savings Program Fund is hereby established as a trust outside of the State treasury, with the Board created in Section 20 as its trustee. The Fund shall include the individual retirement accounts of enrollees, which shall be accounted for as individual accounts. Moneys in the Fund shall consist of moneys received from enrollees and participating employers pursuant to automatic payroll deductions and contributions to savings made under this Act.

The Fund shall be operated in a manner determined by the Board, provided that the Fund is operated so that the accounts of enrollees established under the Program meet the requirements for IRAs under the Internal Revenue Code.

(b) The amounts deposited in the Fund shall not constitute property of the State and the Fund shall not be construed to be a department, institution, or agency of the State. Amounts on deposit in the Fund shall not be commingled with State funds and the State shall have no claim to or against, or interest in, such funds.

Section 16. Illinois Secure Choice Administrative Fund. The Illinois Secure Choice Administrative Fund ("Administrative Fund") is created as a nonappropriated separate and apart trust fund in the State Treasury. The Board shall use moneys in the Administrative Fund to pay for administrative expenses it incurs in the performance of its duties under this Act. The Board shall use moneys in the Administrative Fund to cover start-up administrative expenses it incurs in the performance of its duties under this Act. The Administrative Fund may receive any grants or other moneys designated for administrative purposes from the State, or any unit of federal or local government, or any other person, firm, partnership, or corporation. Any interest earnings that are attributable to moneys in the Administrative Fund must be deposited into the Administrative Fund.

Section 20. Composition of the Board. There is created the Illinois Secure Choice Savings Board.

(a) The Board shall consist of the following 7 members:

(1) the State Treasurer, or his or her designee, who shall serve as chair;

(2) the State Comptroller, or his or her designee;

(3) the Director of the Governor's Office of Management and Budget, or his or her designee;

(4) two public representatives with expertise in retirement savings plan administration or investment, or both, appointed by the Governor;

(5) a representative of participating employers, appointed by the Governor; and

(6) a representative of enrollees, appointed by the Governor.

(b) Members of the Board shall serve without compensation but may be reimbursed for necessary travel expenses incurred in connection with their Board duties from funds appropriated for the purpose.

(c) The initial appointments for the Governor's appointees shall be as follows: one public representative for 4 years; one public representative for 2 years; the representative of participating employers for 3 years; and the representative of enrollees for 1 year. Thereafter, all of the Governor's appointees shall be for terms of 4 years.

(d) A vacancy in the term of an appointed Board member shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(e) Each appointment by the Governor shall be subject to approval by the State Treasurer, who, upon approval, shall certify his or her approval to the Secretary of State. Each appointment by the Governor shall also be subject to the advice and consent of the Senate. In case of a vacancy during a recess of the Senate, the Governor shall make a temporary appointment until the next meeting of the Senate, at which time the Governor shall appoint some person to fill the office. If the State Treasurer does not approve or disapprove the appointment by the Governor within 60 session days after receipt thereof, the person shall be deemed to have been approved by the State Treasurer. Any appointment that has not been acted upon by the Senate within 60 session days after the receipt thereof shall be deemed to have received the advice and consent of the Senate.

(f) Each Board member, prior to assuming office, shall take an oath that he or she will diligently and honestly administer the affairs of the Board and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Program. The oath shall be certified by the officer before whom it is taken and immediately filed in the office of the Secretary of State.

Section 25. Fiduciary Duty. The Board, the individual members of the Board, the trustee appointed under subsection (b) of Section 30, any other agents appointed or engaged by the Board, and all persons serving as Program staff shall discharge their duties with respect to the Program solely in the interest of the Program's enrollees and beneficiaries as follows:

(1) for the exclusive purposes of providing benefits to enrollees and beneficiaries and defraying reasonable expenses of administering the Program;

(2) by investing with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims; and

(3) by using any contributions paid by employees and employers into the trust exclusively for the purpose of paying benefits to the enrollees of the Program, for the cost of administration of the Program, and for investments made for the benefit of the Program.

Section 30. Duties of the Board. In addition to the other duties and responsibilities stated in this Act, the Board shall:

(a) Cause the Program to be designed, established and operated in a manner that:

(1) accords with best practices for retirement savings

vehicles;

(2) maximizes participation, savings, and sound investment practices;

(3) maximizes simplicity, including ease of administration for participating employers and enrollees;

(4) provides an efficient product to enrollees by pooling investment funds;

(5) ensures the portability of benefits; and

(6) provides for the deaccumulation of enrollee assets in a manner that maximizes financial security in retirement.

(b) Appoint a trustee to the IRA Fund in compliance with Section 408 of the Internal Revenue Code.

(c) Explore and establish investment options, subject to Section 45 of this Act, that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the State.

(d) Establish the process by which interest, investment earnings, and investment losses are allocated to individual program accounts on a pro rata basis and are computed at the interest rate on the balance of an individual's account.

(e) Make and enter into contracts necessary for the administration of the Program and Fund, including, but not limited to, retaining and contracting with investment managers, private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals as necessary.

(e-5) Conduct a review of the performance of any investment vendors every 4 years, including, but not limited to, a review of returns, fees, and customer service. A copy of reviews conducted under this subsection (e-5) shall be posted to the Board's Internet website.

(f) Determine the number and duties of staff members needed to administer the Program and assemble such a staff, including, as needed, employing staff, appointing a Program administrator, and entering into contracts with the State Treasurer to make employees of the State Treasurer's Office available to administer the Program.

(g) Cause moneys in the Fund to be held and invested as pooled investments described in Section 45 of this Act, with a view to achieving cost savings through efficiencies and economies of scale.

(h) Evaluate and establish the process by which an enrollee is able to contribute a portion of his or her wages to the Program for automatic deposit of those contributions and the process by which the participating employer provides a payroll deposit retirement savings arrangement to forward those contributions and related information to the Program, including, but not limited to, contracting with financial service companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit retirement savings arrangements or similar arrangements.

(i) Design and establish the process for enrollment under Section 60 of this Act, including the process by which an employee can opt not to participate in the Program, select a contribution level, select an investment option, and terminate participation in the Program.

(j) Evaluate and establish the process by which an individual may voluntarily enroll in and make contributions to the Program.

(k) Accept any grants, appropriations, or other moneys from the State, any unit of federal, State, or local government, or any other person, firm, partnership, or corporation solely for deposit into the Fund, whether for investment or administrative purposes.

(l) Evaluate the need for, and procure as needed, insurance against any and all loss in connection with the property, assets, or activities of the Program, and indemnify as needed each member of the Board from personal loss or liability resulting from a member's action or inaction as a member of the Board.

(m) Make provisions for the payment of administrative costs and expenses for the creation, management, and operation of the Program, including the costs associated with subsection (b) of Section 20 of this Act, subsections (e), (f), (h), and (l) of this Section, subsection (b) of Section 45 of this Act, subsection (a) of Section 80 of this Act, and subsection (n) of Section 85 of this Act. Subject to appropriation, the State may pay administrative costs associated with the creation and management of the Program until sufficient assets are available in the Fund for that purpose. Thereafter, all administrative costs of the Fund, including repayment of any start-up funds provided by the State, shall be paid only out of moneys on deposit therein. However, private funds or federal funding received under subsection (k) of Section 30 of this Act in order to implement the Program until the Fund is self-sustaining shall not be repaid unless those funds were offered contingent upon the promise of such repayment. The Board shall keep annual administrative expenses as low as possible, but in no event shall they exceed 0.75% of the total trust balance.

(n) Allocate administrative fees to individual retirement accounts in the Program on a pro rata basis.

(o) Set minimum and maximum contribution levels in accordance with limits established for IRAs by the Internal Revenue Code.

(p) Facilitate education and outreach to employers and employees.

(q) Facilitate compliance by the Program with all applicable requirements for the Program under the Internal Revenue Code, including tax qualification requirements or any other applicable law and accounting requirements.

(r) Carry out the duties and obligations of the Program in an effective, efficient, and low-cost manner.

(s) Exercise any and all other powers reasonably necessary for the effectuation of the purposes, objectives, and provisions of this Act pertaining to the Program.

(t) Deposit into the Illinois Secure Choice Administrative Fund all grants, gifts, donations, fees, and earnings from investments from the Illinois Secure Choice Savings Program Fund that are used to recover administrative costs. All expenses of the Board shall be paid from the Illinois Secure Choice Administrative Fund.

Section 35. Risk Management. The Board shall annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program. This investment policy shall prohibit the Board, Program, and Fund from borrowing for investment purposes. The risk management and oversight program shall be designed to ensure that an effective risk management system is in place to monitor the risk levels of the Program and Fund portfolio, to ensure that the risks taken are prudent and properly managed, to provide an integrated process for overall risk management, and to assess investment returns as well as risk to determine if the risks taken are adequately compensated compared to applicable performance benchmarks and standards. The Board shall consider the statement of investment policy and any changes in the investment policy at a public hearing.

Section 40. Investment firms.

(a) The Board shall engage, after an open bid process, an investment manager or managers to invest the Fund and any other assets of the Program. Moneys in the Fund may be invested or reinvested by the State Treasurer's Office or may be invested in whole or in part under contract with the State Board of Investment, private investment managers, or both, as selected by the Board. In selecting the investment manager or managers, the Board shall take into consideration and give weight to the investment manager's fees and charges in order to reduce the Program's administrative expenses.

(b) The investment manager or managers shall comply with any and all applicable federal and state laws, rules, and regulations, as well as any and all rules, policies, and guidelines promulgated by the Board with respect to the Program and the investment of the Fund, including, but not limited to, the investment policy.

(c) The investment manager or managers shall provide such reports as the Board deems necessary for the Board to oversee each investment manager's performance and the performance of the Fund.

Section 45. Investment options.

(a) The Board shall establish as an investment option a life-cycle fund with a target date based upon the age of the enrollee. This shall be the default investment option for enrollees who fail to elect an investment option unless and until the Board designates by rule a new investment option as the default as described in subsection (c) of this Section.

(b) The Board may also establish any or all of the following additional investment options:

(1) a conservative principal protection fund;

(2) a growth fund;

(3) 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; if the Board elects to establish a secure return fund, the Board may procure any insurance, annuity, or other product to insure the value of individuals' accounts and guarantee a rate of return; the cost of such funding mechanism shall be paid out of the Fund; under no circumstances shall the Board, Program, Fund, the State, or any participating employer assume any liability for investment or actuarial risk; the Board shall determine whether to establish such investment options based upon an analysis of their cost, risk profile, benefit level, feasibility, and ease of implementation;

(4) an annuity fund.

(c) If the Board elects to establish a secure return fund, the Board shall then determine whether such option shall replace the target date or life-cycle fund as the default investment option for enrollees who do not elect an investment option. In making such determination, the Board shall consider the cost, risk profile, benefit level, and ease of enrollment in the secure return fund. The Board may at any time thereafter revisit this question and, based upon an analysis of these criteria, establish either the secure return fund or the life-cycle fund as the default for enrollees who do not elect an investment option.

Section 50. Benefits. Interest, investment earnings, and investment losses shall be allocated to individual Program accounts as established by the Board under subsection (d) of Section 30 of this Act. An individual's retirement savings benefit under the Program shall be an amount equal to the balance in the individual's Program account on the date the retirement savings benefit becomes payable. The State shall have no liability for the payment of any benefit to any participant in the Program.

Section 55. Employer and employee information packets and disclosure forms.

(a) Prior to the opening of the Program for enrollment, the Board shall design and disseminate to all employers an employer information packet and an employee information packet, which shall include background information on the Program, appropriate disclosures for employees, and information regarding the vendor Internet website described in subsection (i) of Section 60 of this Act.

(b) The Board shall provide for the contents of both the employee information packet and the employer information packet.

(c) The employee information packet shall include a disclosure form. The disclosure form shall explain, but not be limited to, all of the following:

(1) the benefits and risks associated with making contributions to the Program;

(2) the mechanics of how to make contributions to the Program;

(3) how to opt out of the Program;

(4) how to participate in the Program with a level of employee contributions other than 3%;

(5) the process for withdrawal of retirement savings;

(6) how to obtain additional information about the Program;

(7) that employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to this Act;

(8) that the Program is not an employer-sponsored retirement plan; and

(9) that the Program Fund is not guaranteed by the State.

(d) The employee information packet shall also include a form for an employee to note his or her decision to opt out of participation in the Program or elect to participate with a level of employee contributions other than 3%.

(e) Participating employers shall supply the employee information packet to employees upon launch of the Program. Participating employers shall supply the employee information packet to new employees at the time of hiring, and new employees may opt out of participation in the Program or elect to participate with a level of employee contributions other than 3% at that time.

Section 60. Program implementation and enrollment. Except as otherwise provided in Section 93 of this Act, the Program shall be implemented, and enrollment of employees shall begin, within 24 months after the effective date of this Act. The provisions of this Section shall be in force after the Board opens the Program for enrollment.

(a) Each employer shall establish a payroll deposit retirement savings arrangement to allow each employee to participate in the Program at most nine months after the Board opens the Program for enrollment.

(b) Employers shall automatically enroll in the Program each of their employees who has not opted out of participation in the Program using the form described in subsection (c) of Section 55 of this Act and shall provide payroll deduction retirement savings arrangements for such employees and deposit, on behalf of such employees, these funds into the Program. Small employers may, but are not required to, provide payroll deduction retirement savings arrangements for each employee who elects to participate in the Program.

(c) Enrollees shall have the ability to select a contribution level into the Fund. This level may be expressed as a percentage of wages or as a dollar amount up to the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code. Enrollees may change their contribution level at any time, subject to rules promulgated by the Board. If an enrollee fails to select a contribution level using the form described in subsection (c) of Section 55 of this Act, then he or she shall contribute 3% of his or her wages to the Program, provided that such contributions shall not cause the enrollee's total contributions to IRAs for the year to exceed the deductible amount for the enrollee's taxable year under Section 219(b)(1)(A) of the Internal Revenue Code.

(d) Enrollees may select an investment option from the permitted investment options listed in Section 45 of this Act. Enrollees may change their investment option at any time, subject to rules promulgated by the Board. In the event that an enrollee fails to select an investment option, that enrollee shall be placed in the investment option selected by the Board as the default under subsection (c) of Section 45 of this Act. If the Board has not selected a default investment option under subsection (c) of Section 45 of this Act, then an enrollee who fails to select an investment option shall be placed in the life-cycle fund investment option.

(e) Following initial implementation of the Program pursuant to this Section, at least once every year, participating employers shall designate an open enrollment period during which employees who previously opted out of the Program may enroll in the Program.

(f) An employee who opts out of the Program who subsequently wants to participate through the participating employer's payroll deposit retirement savings arrangement may only enroll during the participating employer's designated open enrollment period or if permitted by the participating employer at an earlier time.

(g) Employers shall retain the option at all times to set up any type of employer-sponsored retirement plan, such as a defined benefit plan or a 401(k), Simplified Employee Pension (SEP) plan, or Savings Incentive Match Plan for Employees (SIMPLE) plan, or to offer an automatic enrollment payroll deduction IRA, instead of having a payroll deposit retirement savings arrangement to allow employee participation in the Program.

(h) An employee may terminate his or her participation in the Program at any time in a manner prescribed by the Board.

(i) The Board shall establish and maintain an Internet website designed to assist employers in identifying private sector providers of retirement arrangements that can be set up by the employer rather than allowing employee participation in the Program under this Act; however, the Board shall only establish and maintain an Internet website under this subsection if there is sufficient interest in such an Internet website by private sector providers and if the private sector providers furnish the funding necessary to establish and maintain the Internet website. The Board must provide public notice of the availability of and the process for inclusion on the Internet website before it becomes publicly available. This Internet website must be available to the public before the Board opens the Program for enrollment, and the Internet website address must be included on any Internet website posting or other materials regarding the Program offered to the public by the Board.

Section 65. Payments. Employee contributions deducted by the participating employer through payroll deduction shall be paid by the participating employer to the Fund using one or more payroll deposit retirement savings arrangements established by the Board under subsection (h) of Section 30 of this Act, either:

(1) on or before the last day of the month following

the month in which the compensation otherwise would have been payable to the employee in cash; or

(2) before such later deadline prescribed by the Board for making such payments, but not later than the due date for the deposit of tax required to be deducted and withheld relating to collection of income tax at source on wages or for the deposit of tax required to be paid under the unemployment insurance system for the payroll period to which such payments relate.

Section 70. Duty and liability of the State.

(a) The State shall have no duty or liability to any party for the payment of any retirement savings benefits accrued by any individual under the Program. Any financial liability for the payment of retirement savings benefits in excess of funds available under the Program shall be borne solely by the entities with whom the Board contracts to provide insurance to protect the value of the Program.

(b) No State board, commission, or agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from particular investments selected under this Act, except for any liability that arises out of a breach of fiduciary duty under Section 25 of this Act.

Section 75. Duty and liability of participating employers.

(a) Participating employers shall not have any liability for an employee's decision to participate in, or opt out of, the Program or for the investment decisions of the Board or of any enrollee.

(b) A participating employer shall not be a fiduciary, or considered to be a fiduciary, over the Program. A participating employer shall not bear responsibility for the administration, investment, or investment performance of the Program. A participating employer shall not be liable with regard to investment returns, Program design, and benefits paid to Program participants.

Section 80. Audit and reports.

(a) The Board shall annually submit:

(1) an audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Program during each calendar year by July 1 of the following year to the Governor, the Comptroller, the State Treasurer, and the General Assembly; and

(2) a report prepared by the Board, which shall include, but is not limited to, a summary of the benefits provided by the Program, including the number of enrollees in the Program, the percentage and amounts of investment options and rates of return, and such other information that is relevant to make a full, fair, and effective disclosure of the operations of the Program and the Fund.

The annual audit shall be made by an independent certified public accountant and shall include, but is not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not State employees for the administration of the Program.

(b) In addition to any other statements or reports required by law, the Board shall provide periodic reports at least annually to participating employers, reporting the names of each enrollee employed by the participating employer and the amounts of contributions made by the participating employer on behalf of each employee during the reporting period, as well as to enrollees, reporting contributions and investment income allocated to, withdrawals from, and balances in their Program accounts for the reporting period. Such reports may include any other information regarding the Program as the Board may determine.

Section 85. Penalties.

(a) An employer who fails without reasonable cause to enroll an employee in the Program within the time prescribed under Section 60 of this Act shall be subject to a penalty equal to:

(1) $250 for each employee for each calendar year or portion of a calendar year during which the employee neither was enrolled in the Program nor had elected out of

participation in the Program; or

(2) for each calendar year beginning after the date a penalty has been assessed with respect to an employee, $500 for any portion of that calendar year during which such employee continues to be unenrolled without electing out of participation in the Program.

(b) After determining that an employer is subject to penalty under this Section for a calendar year, the Department shall issue a notice of proposed assessment to such employer, stating the number of employees for which the penalty is proposed under item (1) of subsection (a) of this Section and the number of employees for which the penalty is proposed under item (2) of subsection (a) of this Section for such calendar year, and the total amount of penalties proposed.

Upon the expiration of 90 days after the date on which a notice of proposed assessment was issued, the penalties specified therein shall be deemed assessed, unless the employer had filed a protest with the Department under subsection (c) of this Section.

If, within 90 days after the date on which it was issued, a protest of a notice of proposed assessment is filed under subsection (c) of this Section, the penalties specified therein shall be deemed assessed upon the date when the decision of the Department with respect to the protest becomes final.

(c) A written protest against the proposed assessment shall be filed with the Department in such form as the Department may by rule prescribe, setting forth the grounds on which such protest is based. If such a protest is filed within 90 days after the date the notice of proposed assessment is issued, the Department shall reconsider the proposed assessment and shall grant the employer a hearing. As soon as practicable after such reconsideration and hearing, the Department shall issue a notice of decision to the employer, setting forth the Department's findings of fact and the basis of decision. The decision of the Department shall become final:

(1) if no action for review of the decision is commenced under the Administrative Review Law, on the date on which the time for commencement of such review has expired; or

(2) if a timely action for review of the decision is commenced under the Administrative Review Law, on the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

(d) As soon as practicable after the penalties specified in a notice of proposed assessment are deemed assessed, the Department shall give notice to the employer liable for any unpaid portion of such assessment, stating the amount due and demanding payment. If an employer neglects or refuses to pay the entire liability shown on the notice and demand within 10 days after the notice and demand is issued, the unpaid amount of the liability shall be a lien in favor of the State of

Illinois upon all property and rights to property, whether real or personal, belonging to the employer, and the provisions in the Illinois Income Tax Act regarding liens, levies and collection actions with regard to assessed and unpaid liabilities under that Act, including the periods for taking any action, shall apply.

(e) An employer who has overpaid a penalty assessed under this Section may file a claim for refund with the Department. A claim shall be in writing in such form as the Department may by rule prescribe and shall state the specific grounds upon which it is founded. As soon as practicable after a claim for refund is filed, the Department shall examine it and either issue a refund or issue a notice of denial. If such a protest is filed, the Department shall reconsider the denial and grant the employer a hearing. As soon as practicable after such reconsideration and hearing, the Department shall issue a notice of decision to the employer. The notice shall set forth briefly the Department's findings of fact and the basis of decision in each case decided in whole or in part adversely to the employer. A denial of a claim for refund becomes final 90 days after the date of issuance of the notice of the denial except for such amounts denied as to which the employer has filed a protest with the Department. If a protest has been timely filed, the decision of the Department shall become final:

(1) if no action for review of the decision is

commenced under the Administrative Review Law, on the date on which the time for commencement of such review has expired; or

(2) if a timely action for review of the decision is commenced under the Administrative Review Law, on the date all proceedings in court for the review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

(f) No notice of proposed assessment may be issued with respect to a calendar year after June 30 of the fourth subsequent calendar year. No claim for refund may be filed more than 1 year after the date of payment of the amount to be refunded.

(g) The provisions of the Administrative Review Law and the rules adopted pursuant to it shall apply to and govern all proceedings for the judicial review of final decisions of the Department in response to a protest filed by the employer under subsections (c) and (e) of this Section. Final decisions of the Department shall constitute "administrative decisions" as defined in Section 3-101 of the Code of Civil Procedure.

(h) Whenever notice is required by this Section, it may be given or issued by mailing it by first-class mail addressed to the person concerned at his or her last known address.

(i) All books and records and other papers and documents relevant to the determination of any penalty due under this Section shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

(j) The Department may require employers to report information relevant to their compliance with this Act on returns otherwise due from the employers under Section 704A of the Illinois Income Tax Act and failure to provide the requested information on a return shall cause such return to be treated as unprocessable.

(k) For purposes of any provision of State law allowing the Department or any other agency of this State to offset an amount owed to a taxpayer against a tax liability of that taxpayer or allowing the Department to offset an overpayment of tax against any liability owed to the State, a penalty assessed under this Section shall be deemed to be a tax liability of the employer and any refund due to an employer shall be deemed to be an overpayment of tax of the employer.

(l) Except as provided in this subsection, all information received by the Department from returns filed by an employer or from any investigation conducted under the provisions of this Act shall be confidential, except for official purposes within the Department or pursuant to official procedures for collection of penalties assessed under this Act. Nothing contained in this subsection shall prevent the Director from publishing or making available to the public reasonable statistics concerning the operation of this Act wherein the contents of returns are grouped into aggregates in such a way that the specific information of any employer shall not be disclosed. Nothing contained in this subsection shall prevent the Director from divulging information to an authorized representative of the employer or to any person pursuant to a request or authorization made by the employer or by an authorized representative of the employer.

(m) Civil penalties collected under this Act and fees collected pursuant to subsection (n) of this Section shall be deposited into the Tax Compliance and Administration Fund. The Department may, subject to appropriation, use moneys in the fund to cover expenses it incurs in the performance of its duties under this Act. Interest attributable to moneys in the Tax Compliance and Administration Fund shall be credited to the Tax Compliance and Administration Fund.

(n) The Department may charge the Board a reasonable fee for its costs in performing its duties under this Section to the extent that such costs have not been recovered from penalties imposed under this Section.

(o) This Section shall become operative 9 months after the Board notifies the Director that the Program has been implemented. Upon receipt of such notification from the Board, the Department shall immediately post on its Internet website a notice stating that this Section is operative and the date that it is first operative. This notice shall include a statement that rather than enrolling employees in the Program under this Act, employers may sponsor an alternative arrangement, including, but not limited to, a defined benefit plan, 401(k) plan, a Simplified Employee Pension (SEP) plan, a Savings Incentive Match Plan for Employees (SIMPLE) plan, or an automatic payroll deduction IRA offered through a private provider. The Board shall provide a link to the vendor Internet website described in subsection (i) of Section 60 of this Act.

Section 90. Rules. The Board and the Department shall adopt, in accordance with the Illinois Administrative Procedure Act, any rules that may be necessary to implement this Act.

Section 93. Delayed implementation. If the Board does not obtain adequate funds to implement the Program within the time frame set forth under Section 60 of this Act, the Board may delay the implementation of the Program.

Section 95. Federal considerations. The Board shall request in writing an opinion or ruling from the appropriate entity with jurisdiction over the federal Employee Retirement Income Security Act regarding the applicability of the federal Employee Retirement Income Security Act to the Program. The Board may not implement the Program if the IRA arrangements offered under the Program fail to qualify for the favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code or if it is determined that the

Program is an employee benefit plan and State or employer liability is established under the federal Employee Retirement Income Security Act.

Section 500. The State Finance Act is amended by adding Section 5.855 as follows:

(30 ILCS 105/5.855 new)

Sec. 5.855. The Illinois Secure Choice Administrative Fund.

Maryland

Chapter 324

(House Bill 1378)

AN ACT concerning

Maryland Small Business Retirement Savings Program and Trust

FOR the purpose of establishing the Maryland Small Business Retirement Savings Program for ~~eligible~~ private sector employees; establishing the Maryland Small Business Retirement Savings Trust; establishing the Maryland Small Business Retirement Savings Board to implement, maintain, and administer the Program and the Trust; providing for the composition, chair, and staffing of the Board; providing for the powers and duties of the Board~~, including investing certain assets, adopting an investment policy, disseminating information to employers and employees, and submitting an annual audited financial report; requiring eligible employers to offer the Program and requiring eligible employees of participating employers to participate in the Program unless written notice to opt out is provided to the employer;~~; authorizing the Board to enter into a certain agreement to borrow certain funds; requiring the Board to take certain actions to ensure that the Program is not preempted by federal law; requiring the Board to establish certain procedures and disclosures; specifying that the assets in a certain employee's Program account are the property of the employee; prohibiting the State from transferring any assets of the Trust to specified funds of the State, or otherwise encumbering any assets of the Trust; requiring the Board to design and disseminate certain information to employers and employees; requiring the Board to enter into a certain agreement delegating the administration of the Trust to a third–party administrator; limiting the type of savings arrangements offered by the Board to payroll deposit IRA arrangements; requiring the Board to implement a range of investment options and providers and to select a default investment option; requiring the Board to consider certain information when selecting investment options; authorizing the Board to provide investment options that provide certain income distributions; limiting the ongoing administrative expenses of the Program from exceeding a certain amount; prohibiting the Board from offering investment options that conflict with federal law; prohibiting the Board from offering investment options that could result in certain liabilities; requiring a covered employer to establish a certain payroll deposit retirement savings arrangement, and to automatically enroll covered employees in the Program; prohibiting a covered employer from receiving a certain fee waiver if the covered employer is not in compliance with certain provisions of this Act; establishing that compliance with this Act does not create a certain fiduciary obligation; establishing that a covered employee may opt out of the Program, and re–enroll if the employee has opted out; authorizing certain ~~eligible~~ employees to participate in the Program in a certain manner; requiring the Board to establish a default employee contribution amount; providing for the method of payment of certain expenses incurred by the Board as a result of administering the Program; requiring the Board to adopt certain regulations; prohibiting certain ~~employers~~ employers, taxpayers, and the State from incurring certain liabilities regarding the

Program and the Trust; requiring certain conditions to be met before any plan, trust, administrative arrangement, or investment offering may be implemented; providing for the expiration of terms of certain initial Board members; waiving a certain ~~processing~~ fee for the filing of certain documents by certain business entities under certain circumstances; prohibiting the waiver of a certain filing fee under this Act until the Program is open for enrollment; defining certain terms; and generally relating to the Maryland Small Business Retirement Savings Program and Trust.

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 1–203(b)(3)(ii)
Annotated Code of Maryland
(2014 Replacement Volume and 2015 Supplement)

BY adding to
Article – Corporations and Associations
Section 1–203(b)(14)
Annotated Code of Maryland
(2014 Replacement Volume and 2015 Supplement)

BY adding to
Article – Labor and Employment
Section 12–101 through 12–502 to be under the new title "Title 12. Maryland Small Business Retirement Savings Program and Trust"
Annotated Code of Maryland
(2008 Replacement Volume and 2015 Supplement)

Preamble

WHEREAS, It shall be the policy of the State to assist the Maryland workforce in identifying the need to save for retirement, learning about products and services available in the private sector to accumulate retirement savings, promoting the efforts of employers to adopt retirement plans for employees, and assisting employees who do not have access to an employer–offered savings arrangement to initiate individual retirement accounts; and

WHEREAS, It is the intent of the General Assembly that the Maryland Small Business Retirement Savings Board will outsource the administration and management of the funds on behalf of the program participants, and at no point will the funds be managed directly by the Board; and

WHEREAS, Management of the separate accounts shall be performed by private entities selected by the Board that are licensed and in good standing with the State; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Corporations and Associations

1–203.

(b) (3) (ii) [For] **EXCEPT AS PROVIDED IN PARAGRAPH (14) OF THIS SUBSECTION, FOR** each of the following documents which are filed but not recorded, the filing fee is as indicated:

Annual report of a Maryland corporation, except a charitable or benevolent institution, nonstock corporation, savings and loan corporation, credit union, family farm, and banking institution..	$300
Annual report of a foreign corporation subject to the jurisdiction of this State, except a national banking association, savings and loan association, credit union, nonstock corporation, and charitable and benevolent institution..	$300
Annual report of a Maryland savings and loan association, banking institution, or credit union or of a foreign savings and loan association, national banking association, or credit union that is subject to the jurisdiction of this State	$300
Annual report of a Maryland limited liability company, limited liability partnership, limited partnership, or of a foreign limited liability company, foreign limited liability partnership, or foreign limited partnership, except a family farm..	$300
Annual report of a business trust...	$300
Annual report of a real estate investment trust or foreign statutory trust doing business in this State	$300
Annual report of a family farm..	$100

(14) THE DEPARTMENT SHALL WAIVE THE ~~NONREFUNDABLE PROCESSING~~ FILING **FEE FOR A BUSINESS ENTITY DESCRIBED UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION FOR EACH YEAR THAT THE ENTITY PROVIDES EVIDENCE TO THE DEPARTMENT THAT:**

(I) THE ENTITY IS REQUIRED TO COMPLY WITH AND IS **IN COMPLIANCE WITH TITLE 12~~, SUBTITLE 1~~ OF THE LABOR AND EMPLOYMENT ARTICLE; OR**

(II) THE ENTITY OTHERWISE PROVIDES AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION INDIVIDUAL RETIREMENT ACCOUNT OR

INDIVIDUAL RETIREMENT ANNUITY UNDER 26 U.S.C. § 408(A) OR (B) OR AN ~~EMPLOYER–SPONSORED RETIREMENT PLAN~~ EMPLOYER–OFFERED SAVINGS ARRANGEMENT THAT IS IN COMPLIANCE WITH ~~THE FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT~~ FEDERAL LAW.

Article – Labor and Employment

TITLE 12. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM AND TRUST.

SUBTITLE 1. DEFINITIONS.

12–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BOARD" MEANS THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD.

(C) (1) "~~ELIGIBLE~~ COVERED EMPLOYEE" MEANS ~~A PERSON~~ AN INDIVIDUAL WHO IS EMPLOYED BY ~~AN ELIGIBLE~~ A COVERED EMPLOYER ~~OR WHO IS OTHERWISE ELIGIBLE TO PARTICIPATE IN THE PROGRAM UNDER THIS TITLE~~.

(2) "~~ELIGIBLE~~ COVERED EMPLOYEE" DOES NOT INCLUDE:

(I) AN EMPLOYEE COVERED UNDER THE FEDERAL RAILWAY LABOR ACT (45 U.S.C. SEC. 151) OR AN EMPLOYEE ENGAGED IN INTERSTATE COMMERCE SO AS NOT TO BE SUBJECT TO THE LEGISLATIVE POWERS OF THE STATE, EXCEPT INSOFAR AS APPLICATION OF THIS TITLE IS AUTHORIZED UNDER THE UNITED STATES CONSTITUTION OR LAWS OF THE UNITED STATES;

(II) AN EMPLOYEE ELIGIBLE TO PARTICIPATE IN A QUALIFYING RETIREMENT PLAN ~~OR ARRANGEMENT DESCRIBED IN 26 U.S.C. § 219(G)(5) OR AN EMPLOYEE WHO WAS ELIGIBLE TO PARTICIPATE BUT THE PLAN OR ARRANGEMENT WAS TERMINATED OR FROZEN AT ANY TIME DURING THE PRECEDING 2 CALENDAR YEARS~~;

(III) AN EMPLOYEE COVERED BY A VALID COLLECTIVE BARGAINING AGREEMENT THAT EXPRESSLY PROVIDES FOR A MULTI–EMPLOYER RETIREMENT PLAN DESCRIBED IN 26 U.S.C. § 414(F); OR

(IV) AN EMPLOYEE WHO IS UNDER THE AGE OF 18 YEARS BEFORE THE BEGINNING OF THE CALENDAR YEAR.

(D) (1) "~~ELIGIBLE~~ COVERED EMPLOYER" MEANS A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE, WHETHER FOR PROFIT OR NOT FOR PROFIT, THAT~~:~~

~~(I) EMPLOYS 10 OR MORE ELIGIBLE EMPLOYEES WHO ARE EACH EMPLOYED BY THE ELIGIBLE EMPLOYER FOR 30 OR MORE HOURS PER WEEK; AND~~

~~(II)~~ PAYS THE ~~ELIGIBLE~~ COVERED EMPLOYER'S EMPLOYEES THROUGH A PAYROLL SYSTEM OR SERVICE.

(2) "~~ELIGIBLE~~ COVERED EMPLOYER" DOES NOT INCLUDE:

(I) THE FEDERAL GOVERNMENT;

(II) THE STATE OR ANY UNIT OF THE STATE;

(III) A COUNTY OR ANY UNIT OF THE COUNTY;

(IV) A MUNICIPAL CORPORATION OR ANY UNIT OF THE MUNICIPAL CORPORATION;

(V) AN EMPLOYER THAT CURRENTLY OFFERS AN ~~EMPLOYER–SPONSORED RETIREMENT PLAN~~ EMPLOYER–OFFERED SAVINGS ARRANGEMENT THAT WAS ESTABLISHED SEPARATELY FROM THE REQUIREMENTS OF THIS TITLE;

(VI) AN EMPLOYER THAT, AT ANY TIME DURING THE PRECEDING 2 CALENDAR YEARS, ~~TERMINATED AN EMPLOYER–SPONSORED RETIREMENT PLAN~~ OFFERED AN EMPLOYER–OFFERED SAVINGS ARRANGEMENT THAT WAS ESTABLISHED SEPARATELY FROM THE REQUIREMENTS OF THIS TITLE; OR

(VII) AN EMPLOYER THAT HAS NOT BEEN IN BUSINESS AT ALL TIMES DURING THE CURRENT CALENDAR YEAR AND THE PRECEDING CALENDAR YEAR.

(E) "IRA" MEANS AN INDIVIDUAL RETIREMENT ACCOUNT OR AN INDIVIDUAL RETIREMENT ANNUITY UNDER 26 U.S.C. § 408(A) OR (B).

(F) "MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM" MEANS A RETIREMENT SAVINGS PROGRAM ESTABLISHED ~~AND OFFERED~~ BY THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD UNDER THIS TITLE.

(G) "PARTICIPATING EMPLOYEE" MEANS AN ~~ELIGIBLE~~ EMPLOYEE THAT ~~ELECTS TO PARTICIPATE IN~~ IS PARTICIPATING IN THE PROGRAM THROUGH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT ~~UNDER THIS TITLE FOR ELIGIBLE EMPLOYEES~~ IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.

(H) "PARTICIPATING EMPLOYER" MEANS ~~AN ELIGIBLE~~ A COVERED EMPLOYER THAT PROVIDES A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT UNDER THIS TITLE FOR ~~ELIGIBLE~~ COVERED EMPLOYEES.

(I) "PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT" MEANS AN ARRANGEMENT BY WHICH ~~AN~~ A COVERED EMPLOYER REMITS PAYROLL DEDUCTION CONTRIBUTIONS OF PARTICIPATING EMPLOYEES TO ~~A RETIREMENT SAVINGS PROGRAM~~ THE PROGRAM.

(J) "PROGRAM" MEANS THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM ESTABLISHED UNDER THIS TITLE.

(K) "TRUST" MEANS THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST ESTABLISHED UNDER THIS TITLE.

SUBTITLE 2. ESTABLISHMENT; POWERS AND DUTIES OF BOARD.

12–201.

(A) THERE IS A MARYLAND SMALL BUSINESS RETIREMENT SAVINGS BOARD.

(B) THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

(1) THE STATE TREASURER, OR THE STATE TREASURER'S DESIGNEE;

(2) THE SECRETARY OF LABOR, LICENSING, AND REGULATION, OR THE SECRETARY'S DESIGNEE; AND

(3) NINE MEMBERS WITH EXPERTISE IN RETIREMENT PROGRAMS AND BENEFITS, INVESTMENTS, FINANCIAL SYSTEMS AND CONTROLS, OR SMALL BUSINESS, APPOINTED AS FOLLOWS:

(I) THREE MEMBERS, APPOINTED BY THE GOVERNOR;

(II) THREE MEMBERS, APPOINTED BY THE PRESIDENT OF THE SENATE; AND

(III) THREE MEMBERS, APPOINTED BY THE SPEAKER OF THE HOUSE OF DELEGATES.

(C) (1) THE TERM OF A MEMBER IS 4 YEARS.

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JULY 1, 2016.

(3) AT THE END OF A TERM A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(D) THE BOARD SHALL ELECT A CHAIR FROM AMONG THE MEMBERS OF THE BOARD.

(E) THE GOVERNOR MAY REMOVE A MEMBER FOR INCOMPETENCE OR MISCONDUCT.

12–202.

(A) THE BOARD SHALL MEET AT THE TIMES AND PLACES THAT THE BOARD DETERMINES.

(B) (1) THE BOARD MAY EMPLOY A STAFF AND MAY HIRE CONSULTANTS, ADMINISTRATORS, AND OTHER PROFESSIONALS AS NECESSARY TO HELP IMPLEMENT, MAINTAIN, AND ADMINISTER THE PROGRAM AND THE TRUST.

(2) ALL EXPENSES, INCLUDING EMPLOYEE COSTS, INCURRED TO IMPLEMENT, MAINTAIN, AND ADMINISTER THE PROGRAM AND THE TRUST SHALL BE PAID FROM MONEY COLLECTED BY OR FOR THE PROGRAM OR THE TRUST.

<u>**(3) CONSISTENT WITH ITS FIDUCIARY DUTIES, THE BOARD MAY ENTER INTO AN AGREEMENT TO BORROW FUNDS FROM THE STATE OR ANY OTHER ENTITY TO PROVIDE FUNDING FOR THE OPERATION OF THE PROGRAM UNTIL THE PROGRAM CAN GENERATE SUFFICIENT FUNDING FOR OPERATIONS THROUGH FEES ASSESSED ON PROGRAM ACCOUNTS.**</u>

12–203.

(A) THE BOARD, THE PROGRAM ADMINISTRATOR, AND STAFF SHALL DISCHARGE THE DUTIES WITH RESPECT TO THE TRUST SOLELY IN THE INTEREST OF THE PROGRAM PARTICIPANTS AS FOLLOWS:

(1) FOR THE EXCLUSIVE PURPOSES OF PROVIDING BENEFITS TO PROGRAM PARTICIPANTS AND DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE PROGRAM; AND

(2) BY ~~INVESTING~~ SELECTING INVESTMENT OPTIONS OR PROGRAMS THAT WILL INVEST WITH THE CARE, SKILL, PRUDENCE, AND DILIGENCE UNDER THE CIRCUMSTANCES THEN PREVAILING THAT A PRUDENT PERSON ACTING IN A LIKE CAPACITY AND FAMILIAR WITH THOSE MATTERS WOULD USE IN THE CONDUCT OF AN ENTERPRISE OF A LIKE CHARACTER AND WITH LIKE AIMS.

(B) (1) THE BOARD SHALL ANNUALLY PREPARE AND ADOPT A WRITTEN STATEMENT OF INVESTMENT POLICY THAT INCLUDES A RISK MANAGEMENT AND OVERSIGHT PROGRAM.

(2) THE INVESTMENT POLICY SHALL CONSIDER INVESTMENT OPTIONS OR PROGRAMS THAT WILL SEEK TO MITIGATE RISK BY MAINTAINING A BALANCED INVESTMENT PORTFOLIO THAT PROVIDES ASSURANCE THAT NO SINGLE INVESTMENT OR CLASS OF INVESTMENTS WILL HAVE A DISPROPORTIONATE IMPACT ON THE TOTAL PORTFOLIO.

(3) THE RISK MANAGEMENT AND OVERSIGHT PROGRAM SHALL BE DESIGNED TO ENSURE THAT AN EFFECTIVE RISK MANAGEMENT SYSTEM IS IN PLACE TO MONITOR THE RISK LEVELS OF THE PROGRAM INVESTMENT PORTFOLIO AND ENSURE THAT THE RISKS TAKEN ARE PRUDENT AND PROPERLY MANAGED.

12–204.

(A) IN ADDITION TO THE POWERS AND DUTIES SET FORTH ELSEWHERE IN THIS TITLE, THE BOARD ~~MAY~~:

(1) SHALL CAUSE THE PROGRAM OR PAYROLL DEPOSIT IRA ARRANGEMENTS ESTABLISHED UNDER THE PROGRAM TO BE DESIGNED, ESTABLISHED, AND OPERATED;

(2) SHALL APPOINT A PROGRAM ADMINISTRATOR AND DETERMINE THE DUTIES OF THE PROGRAM ADMINISTRATOR;

(3) SHALL **EMPLOY STAFF AS NECESSARY AND SET THE COMPENSATION OF THE STAFF;**

(4) SHALL **MAKE PROVISIONS FOR THE PAYMENT OF COSTS OF ADMINISTRATION AND OPERATION OF THE TRUST;**

(5) SHALL **EVALUATE AND ESTABLISH THE PROCESS FOR AN** ~~**ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER TO CONTRIBUTE A PORTION OF THE EMPLOYEE'S SALARY OR WAGES TO THE PROGRAM FOR AUTOMATIC DEPOSIT OF THE CONTRIBUTIONS**~~ EMPLOYEE TO CONTRIBUTE AUTOMATICALLY TO THE PROGRAM**;**

(6) SHALL **EVALUATE AND ESTABLISH THE PROCESS FOR A PARTICIPATING EMPLOYER TO PROVIDE A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT FOR** ~~**ELIGIBLE**~~ COVERED **EMPLOYEES AND TO FORWARD THE EMPLOYEE CONTRIBUTION AND RELATED INFORMATION TO THE PROGRAM OR ITS AGENTS, WHICH MAY INCLUDE FINANCIAL SERVICES COMPANIES AND THIRD–PARTY ADMINISTRATORS WITH THE CAPABILITY TO RECEIVE AND PROCESS EMPLOYEE INFORMATION AND CONTRIBUTIONS FOR PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENTS OR OTHER ARRANGEMENTS AUTHORIZED BY THIS TITLE;**

(7) SHALL **DESIGN AND ESTABLISH THE PROCESS FOR THE ENROLLMENT OF PROGRAM PARTICIPANTS;**

(8) SHALL **EVALUATE AND ESTABLISH** ~~**THE PROCESS FOR A PARTICIPATING EMPLOYER TO USE THE PROGRAM TO REMIT EMPLOYEES' CONTRIBUTIONS TO THEIR INDIVIDUAL RETIREMENT ACCOUNTS ON BEHALF OF THE EMPLOYEES**~~ A RANGE OF INVESTMENT OPTIONS, INCLUDING A DEFAULT INVESTMENT SELECTION FOR EMPLOYEES' PAYROLL DEPOSIT IRAS**;**

(9) SHALL **PROCURE INSURANCE AGAINST ANY LOSS IN CONNECTION WITH THE PROPERTY, ASSETS, OR ACTIVITIES OF THE TRUST, AND SECURE PRIVATE UNDERWRITING AND REINSURANCE TO MANAGE RISK** ~~**AND INSURE THE RETIREMENT SAVINGS RATE OF RETURN**~~**;**

(10) SHALL **PROCURE INSURANCE INDEMNIFYING EACH MEMBER OF THE BOARD FROM PERSONAL LOSS OR LIABILITY RESULTING FROM A MEMBER'S ACTION OR INACTION AS A MEMBER OF THE BOARD;**

(11) SHALL **SET MINIMUM AND MAXIMUM EMPLOYEE CONTRIBUTION LEVELS IN ACCORDANCE WITH CONTRIBUTION LIMITS SET FOR IRAS BY THE INTERNAL REVENUE CODE;**

(12) MAY **ARRANGE FOR COLLECTIVE, COMMON, AND POOLED INVESTMENT OF ASSETS OF THE PROGRAM OR ARRANGEMENTS, INCLUDING INVESTMENTS IN CONJUNCTION WITH OTHER FUNDS WITH WHICH THOSE ASSETS ARE AUTHORIZED TO BE COLLECTIVELY INVESTED, WITH A VIEW TO SAVING COSTS THROUGH EFFICIENCIES AND ECONOMIES OF SCALE;**

(13) SHALL **DETERMINE THE ALLOCATION OF ADMINISTRATIVE FEES TO** ~~**EACH INDIVIDUAL RETIREMENT ACCOUNT ON A PRO RATA BASIS, NOT TO EXCEED 1% OF THE TOTAL BALANCE IN THE TRUST**~~ INDIVIDUAL RETIREMENT ACCOUNTS**;**

(14) SHALL **EXPLORE AND ESTABLISH INVESTMENT OPTIONS THAT OFFER EMPLOYEES RETURNS ON CONTRIBUTIONS AND THE CONVERSION OF INDIVIDUAL RETIREMENT SAVINGS ACCOUNT BALANCES TO SECURE RETIREMENT INCOME WITHOUT INCURRING DEBT OR LIABILITIES TO THE STATE;**

(15) ~~**IF NECESSARY,**~~ SHALL **DETERMINE THE ELIGIBILITY OF AN EMPLOYER, EMPLOYEE, OR ANY OTHER INDIVIDUAL TO PARTICIPATE IN THE PROGRAM;** AND

(16) MAY **EVALUATE AND ESTABLISH THE PROCESS BY WHICH AN** ~~**ELIGIBLE**~~ **EMPLOYEE OF A NONPARTICIPATING EMPLOYER MAY ENROLL IN AND MAKE CONTRIBUTIONS TO THE PROGRAM**~~**; AND**~~

~~**(17) DETERMINE INTEREST RATES TO BE ALLOCATED TO PROGRAM ACCOUNTS**~~**.**

(B) THE BOARD SHALL ADOPT REGULATIONS AND TAKE ANY OTHER ACTION **NECESSARY TO IMPLEMENT THIS TITLE CONSISTENT WITH THE INTERNAL REVENUE CODE AND REGULATIONS ISSUED IN ACCORDANCE WITH THE INTERNAL REVENUE CODE TO ENSURE THAT THE PROGRAM MEETS ALL CRITERIA FOR FEDERAL TAX DEFERRAL OR TAX–EXEMPT BENEFITS OR BOTH.**

(C) THE BOARD SHALL TAKE ANY ACTION NECESSARY TO ENSURE THAT THE PROGRAM IS NOT PREEMPTED BY FEDERAL LAW.

12–205.

(A) THE BOARD SHALL ESTABLISH PROCEDURES AND DISCLOSURES TO PROTECT THE INTERESTS OF PARTICIPANTS AND EMPLOYERS.

(B) (1) BEFORE OPENING THE PROGRAM FOR ENROLLMENT, THE BOARD SHALL DESIGN AND DISSEMINATE TO EMPLOYERS ~~**AN EMPLOYEE**~~ AND EMPLOYEES **INFORMATION** ~~**PACKET**~~ REGARDING THE PROGRAM**.**

(2) THE ~~PACKET~~ INFORMATION PROVIDED SHALL INCLUDE BACKGROUND INFORMATION ON THE PROGRAM AND APPROPRIATE DISCLOSURES FOR ~~EMPLOYEES.~~

~~(B)~~ ~~THE DISCLOSURE FORM SHALL INCLUDE:~~ EMPLOYEES, INCLUDING:

~~(1)~~ (I) THE BENEFITS AND RISKS ASSOCIATED WITH MAKING CONTRIBUTIONS TO THE PROGRAM;

~~(2)~~ (II) THE MECHANICS OF HOW TO MAKE CONTRIBUTIONS TO THE PROGRAM;

~~(3)~~ (III) HOW TO OPT OUT OF THE PROGRAM;

~~(4)~~ (IV) THE PROCESS FOR WITHDRAWAL OF RETIREMENT SAVINGS; ~~AND~~

~~(5)~~ (V) HOW TO OBTAIN ADDITIONAL INFORMATION ON THE PROGRAM; AND

(VI) INFORMATION ABOUT ALTERNATIVE RETIREMENT SAVINGS OPTIONS.

(C) THE DISCLOSURE FORM SHALL CLEARLY STATE THE FOLLOWING:

(1) EMPLOYEES SEEKING FINANCIAL ADVICE SHOULD CONTACT FINANCIAL ADVISORS BECAUSE EMPLOYERS ARE NOT IN A POSITION TO PROVIDE FINANCIAL ADVICE;

(2) IN ACCORDANCE WITH § 12–501 OF THIS TITLE, EMPLOYERS ARE NOT LIABLE FOR DECISIONS MADE BY EMPLOYEES;

(3) THE PROGRAM IS NOT AN ~~EMPLOYER–SPONSORED RETIREMENT PLAN~~ EMPLOYER–OFFERED SAVINGS ARRANGEMENT; AND

(4) IN ACCORDANCE WITH § 12–502 OF THIS TITLE, THE PROGRAM FUND MAY BE PRIVATELY INSURED AND IS NOT GUARANTEED BY THE STATE.

~~(D) THE DISCLOSURE FORM SHALL INCLUDE A SIGNATURE LINE FOR THE EMPLOYEE TO SIGN AND DATE ACKNOWLEDGING THAT THE EMPLOYEE HAS READ ALL OF THE DISCLOSURES AND UNDERSTANDS THE DISCLOSURES.~~

~~(E) (1) THE EMPLOYEE INFORMATION PACKET SHALL ALSO INCLUDE AN OPT–OUT FORM FOR AN ELIGIBLE EMPLOYEE TO NOTE THE EMPLOYEE'S DECISION TO OPT OUT OF PARTICIPATION IN THE PROGRAM.~~

~~(2) THE OPT–OUT NOTATION SHALL BE SIMPLE AND CONCISE AND DRAFTED IN A MANNER THAT THE BOARD DEEMS NECESSARY TO APPROPRIATELY EVIDENCE THE EMPLOYEE'S UNDERSTANDING THAT THE EMPLOYEE IS CHOOSING NOT TO AUTOMATICALLY DEDUCT EARNINGS TO SAVE FOR RETIREMENT.~~

~~(F) (1) THE EMPLOYEE INFORMATION PACKET SHALL BE MADE AVAILABLE TO EMPLOYERS THROUGH THE BOARD AND SUPPLIED TO EMPLOYEES AT THE TIME OF HIRING.~~

~~(2) ALL NEW EMPLOYEES SHALL REVIEW AND ACKNOWLEDGE HAVING READ THE EMPLOYEE INFORMATION PACKET BY SIGNING THE SIGNATURE LINE ACCOMPANIED BY THE DATE OF THE SIGNATURE.~~

~~(G) THE EMPLOYEE INFORMATION PACKET SHALL BE SUPPLIED TO EXISTING EMPLOYEES WHEN THE PROGRAM IS INITIALLY LAUNCHED FOR THAT PARTICIPATING EMPLOYER IN ACCORDANCE WITH § 12–402 OF THIS TITLE, AND EMPLOYEES SHALL REVIEW AND SIGN THE DISCLOSURE FORM AT THAT TIME.~~

(D) THE BOARD SHALL ESTABLISH PROCEDURES FOR:

(1) A COVERED EMPLOYEE TO OPT OUT OF PARTICIPATION IN THE PROGRAM;

(2) A PARTICIPATING EMPLOYEE TO OPT OUT OF PARTICIPATION IN THE PROGRAM AFTER THE PARTICIPATING EMPLOYEE HAS COMMENCED PARTICIPATION; AND

(3) AN EMPLOYEE WHO HAS OPTED OUT OF PARTICIPATION TO PARTICIPATE OR RESUME PARTICIPATION IN THE PROGRAM.

12–206.

(A) ON OR BEFORE AUGUST 1 EACH YEAR, THE BOARD SHALL SUBMIT AN ANNUAL AUDITED FINANCIAL REPORT, PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, ON THE OPERATIONS OF THE TRUST TO THE GOVERNOR AND, SUBJECT TO § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

(B) THE ANNUAL AUDIT SHALL BE MADE BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT AND SHALL INCLUDE DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO THE USE OF OUTSIDE CONSULTANTS, INDEPENDENT CONTRACTORS, AND ANY OTHER PERSONS WHO ARE NOT STATE EMPLOYEES.

SUBTITLE 3. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST.

12–301.

(A) THERE IS A MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST.

(B) (1) THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS TRUST SHALL BE ADMINISTERED BY THE BOARD FOR THE PURPOSE OF PROMOTING GREATER RETIREMENT SAVINGS FOR MARYLAND PRIVATE SECTOR EMPLOYEES IN A CONVENIENT, VOLUNTARY, LOW–COST, AND PORTABLE MANNER.

(2) THE BOARD SHALL ENTER INTO AN AGREEMENT DELEGATING THE ADMINISTRATION OF THE TRUST TO A THIRD–PARTY ADMINISTRATOR.

(C) MONEY IN THE TRUST MAY BE INVESTED OR REINVESTED AS DETERMINED BY THE BOARD.

(D) ANY CONTRIBUTIONS PAID BY EMPLOYEES INTO THE TRUST MAY BE USED ONLY TO:

(1) PAY BENEFITS TO THE PARTICIPANTS OF THE PROGRAM;

(2) PAY THE COST FOR ADMINISTERING THE PROGRAM; AND

(3) MAKE INVESTMENTS FOR THE BENEFIT OF THE PROGRAM.

(E) ~~(1)~~ THE BOARD SHALL ESTABLISH, BY REGULATION, DATES WHEN AN EMPLOYER SHALL DEPOSIT EMPLOYEE CONTRIBUTIONS.

~~(2) THE BOARD MAY NOT ESTABLISH A DEADLINE UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT IS LATER THAN THE DUE DATE FOR:~~

~~(I) THE DEPOSIT OF TAX REQUIRED TO BE DEDUCTED AND WITHHELD RELATING TO COLLECTION OF INCOME TAX AT SOURCE ON WAGES; OR~~

~~(II) THE DEPOSIT OF TAX REQUIRED TO BE PAID UNDER THE UNEMPLOYMENT INSURANCE SYSTEM FOR THE PAYROLL PERIOD TO WHICH THE PAYMENTS RELATE.~~

(F) THE STATE MAY NOT TRANSFER ANY ASSETS OF THE TRUST TO THE GENERAL FUND OR ANY OTHER FUND OF THE STATE, OR OTHERWISE ENCUMBER ANY ASSETS OF THE TRUST.

SUBTITLE 4. MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM.

12–401.

(A) THERE IS A MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM.

(B) THE MARYLAND SMALL BUSINESS RETIREMENT SAVINGS PROGRAM SHALL ONLY INCLUDE ONE OR MORE PAYROLL DEPOSIT IRA ARRANGEMENTS AS DETERMINED BY THE BOARD.

(C) THE BOARD SHALL:

(1) IMPLEMENT A RANGE OF INVESTMENT OPTIONS AND PROVIDERS; AND

(2) SELECT A DEFAULT INVESTMENT OPTION FOR PROGRAM PARTICIPANTS.

(D) WHEN SELECTING INVESTMENT OPTIONS, THE BOARD SHALL CONSIDER METHODS TO MINIMIZE THE RISK OF SIGNIFICANT INVESTMENT LOSSES AT THE TIME OF A PARTICIPATING EMPLOYEE'S RETIREMENT.

(E) THE BOARD MAY PROVIDE AN INVESTMENT OPTION THAT PROVIDES AN ASSURED LIFETIME INCOME.

(F) (1) THE BOARD SHALL CONSIDER INVESTMENT OPTIONS THAT MINIMIZE ADMINISTRATIVE EXPENSES.

(2) ONGOING ANNUAL ADMINISTRATIVE EXPENSES MAY NOT EXCEED 0.5% OF ASSETS UNDER MANAGEMENT IN THE PROGRAM.

(G) THE BOARD MAY NOT OFFER ANY INVESTMENT OPTIONS THAT CONFLICT WITH FEDERAL LAW.

(H) THE BOARD MAY NOT OFFER ANY INVESTMENT OPTIONS THAT COULD RESULT IN LIABILITY TO THE STATE OR ITS TAXPAYERS.

~~**(C) INTEREST SHALL BE ALLOCATED TO PROGRAM ACCOUNTS AS DETERMINED BY THE BOARD.**~~

~~**(D) AN INDIVIDUAL'S RETIREMENT SAVINGS BENEFIT UNDER THE PROGRAM SHALL BE AN AMOUNT EQUAL TO THE BALANCE IN THE INDIVIDUAL'S PROGRAM ACCOUNT ON THE DATE THE RETIREMENT SAVINGS BENEFIT BECOMES PAYABLE.**~~

12–402.

(A) (1) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ~~ELIGIBLE~~ COVERED EMPLOYERS SHALL ESTABLISH A PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

~~**(B) (1) AN ELIGIBLE EMPLOYER SHALL ENROLL ALL ELIGIBLE EMPLOYEES IN THE PROGRAM, UNLESS THE EMPLOYEE ELECTS NOT TO PARTICIPATE IN THE PROGRAM.**~~

~~**(2) AN ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER MAY ELECT TO OPT OUT OF THE PROGRAM BY MAKING THAT ELECTION ON THE OPT–OUT FORM.**~~

~~**(3) AN ELIGIBLE EMPLOYEE OF A PARTICIPATING EMPLOYER WHO ELECTS TO OPT OUT OF THE PROGRAM AND WHO SUBSEQUENTLY WANTS TO PARTICIPATE THROUGH THE EMPLOYER'S PAYROLL DEPOSIT RETIREMENT SAVINGS ARRANGEMENT MAY ENROLL IN A MANNER PRESCRIBED BY THE BOARD**~~

(2) A COVERED EMPLOYER SHALL AUTOMATICALLY ENROLL A COVERED EMPLOYEE IN THE PROGRAM, UNLESS THE EMPLOYEE ELECTS TO OPT OUT IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE BOARD.

(B) IF A COVERED EMPLOYER IS NOT IN COMPLIANCE WITH SUBSECTION (A) OF THIS SECTION, THE COVERED EMPLOYER MAY NOT RECEIVE A WAIVER OF THE FILING FEE UNDER § 1–203(B)(14) OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(C) EMPLOYERS SHALL RETAIN THE OPTION AT ALL TIMES TO SET UP ANY TYPE OF ~~EMPLOYER–SPONSORED RETIREMENT PLAN~~ EMPLOYER–OFFERED SAVINGS ARRANGEMENT, SUCH AS A DEFINED BENEFIT PLAN OR A 401(K), SIMPLIFIED EMPLOYEE PENSION (SEP) PLAN, OR SAVINGS INCENTIVE MATCH PLAN FOR EMPLOYEES (SIMPLE) PLAN, OR TO OFFER AN AUTOMATIC ENROLLMENT PAYROLL DEDUCTION IRA, INSTEAD OF HAVING A PAYROLL DEPOSIT

RETIREMENT SAVINGS ARRANGEMENT TO ALLOW EMPLOYEE PARTICIPATION IN THE PROGRAM.

(D) COMPLIANCE WITH THIS TITLE AND PARTICIPATION IN THE PROGRAM BY ITSELF DOES NOT CREATE A FIDUCIARY OBLIGATION OF AN EMPLOYER WITH RESPECT TO THE OPERATION OF THE PROGRAM OR FUNDS CONTRIBUTED TO THE PROGRAM.

12–403.

(A) A COVERED EMPLOYEE OF A PARTICIPATING EMPLOYER MAY ELECT TO OPT OUT OF THE PROGRAM.

(B) A COVERED EMPLOYEE OF A PARTICIPATING EMPLOYER WHO ELECTS TO OPT OUT OF THE PROGRAM MAY RE–ENROLL IN THE PROGRAM IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE BOARD.

~~(D)~~ (C) AFTER THE BOARD OPENS THE PROGRAM FOR ENROLLMENT, ~~ANY~~ AN ~~ELIGIBLE~~ EMPLOYEE OF A NONPARTICIPATING EMPLOYER MAY ELECT TO PARTICIPATE IN THE PROGRAM ~~AT ANY TIME IN A MANNER PRESCRIBED~~ AS AUTHORIZED BY THE BOARD.

~~(E)~~ (D) A PARTICIPATING EMPLOYEE MAY TERMINATE PARTICIPATION IN THE PROGRAM AT ANY TIME IN A MANNER PRESCRIBED BY THE BOARD ~~AND THEREAFTER BY MAKING A NOTATION ON THE OPT–OUT FORM~~.

~~(F)~~ (E) UNLESS OTHERWISE SPECIFIED BY THE EMPLOYEE, A PARTICIPATING EMPLOYEE SHALL CONTRIBUTE ~~3%~~ A FIXED PERCENTAGE OR DOLLAR AMOUNT OF THE EMPLOYEE'S ~~ANNUAL~~ SALARY OR WAGES TO THE PROGRAM.

~~(G)~~ (F) BY REGULATION, THE BOARD SHALL SET AND MAY ADJUST THE DEFAULT CONTRIBUTION AMOUNT SET IN SUBSECTION ~~(F)~~ (E) OF THIS SECTION.

(G) THE ASSETS IN A PARTICIPATING EMPLOYEE'S PROGRAM ACCOUNT ARE THE PROPERTY OF THE PARTICIPATING EMPLOYEE.

SUBTITLE 5. LIMITATION OF LIABILITY.

12–501.

(A) AN EMPLOYER MAY NOT BE HELD LIABLE FOR:

(1) AN EMPLOYEE'S DECISION TO PARTICIPATE IN OR OPT OUT OF THE PROGRAM;

(2) THE INVESTMENT DECISIONS OF EMPLOYEES WHOSE ASSETS ARE DEPOSITED IN THE PROGRAM;

(3) THE ADMINISTRATION, INVESTMENT, OR INVESTMENT PERFORMANCE OF THE TRUST OR THE PROGRAM; OR

(4) THE PROGRAM DESIGN OR THE BENEFITS PAID TO PROGRAM PARTICIPANTS.

(B) AN EMPLOYER IS NOT A FIDUCIARY, AND MAY NOT BE CONSIDERED TO BE A FIDUCIARY, OF THE TRUST OR THE PROGRAM.

12–502.

(A) THE STATE MAY NOT BE HELD LIABLE FOR THE PAYMENT OF THE RETIREMENT SAVINGS BENEFIT EARNED BY PROGRAM PARTICIPANTS IN ACCORDANCE WITH THIS TITLE.

(B) THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE ~~TRUST AND~~ BOARD, TRUST, OR THE PROGRAM ARE NOT THE DEBTS, CONTRACTS, AND OBLIGATIONS OF THE STATE AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE IS PLEDGED DIRECTLY OR INDIRECTLY TO THE PAYMENT OF THE DEBTS, CONTRACTS, AND OBLIGATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Maryland Small Business Retirement Savings Board established by Section 1 of this Act who are subject to appointment end as follows:

(1) three members in 2018;

(2) three members in 2019; and

(3) three members in 2020.

SECTION 3. AND BE IT FURTHER ENACTED, That, before any plan, trust, administrative arrangement, or investment offering may be implemented under this Act, the Board shall obtain an opinion from its counsel or from the federal government that the plan, trust, administrative arrangement, investment offerings, and arrangements for individual retirement accounts or individual retirement annuities under 26 U.S.C. § 408(a) or (b) shall qualify for the favorable federal income tax treatment ordinarily accorded to individual retirement accounts or annuities under the Internal Revenue Code~~, and the~~

~~Maryland Small Business Retirement Savings Program shall be determined not to be an employee benefit plan under the federal Employee Retirement Income Security Act~~.

SECTION 4. AND BE IT FURTHER ENACTED, That the filing fee under § 1–203(b)(3)(ii) of the Corporations and Associations Article may not be waived in accordance with this Act until the Maryland Small Business Savings Program is open for enrollment.

SECTION ~~4.~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2016.

Approved by the Governor, May 10, 2016.

Massachusetts

Print

Acts
2012
Chapter 60 AN ACT PROVIDING RETIREMENT OPTIONS FOR NONPROFIT ORGANIZATIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Chapter 29 of the General Laws is hereby amended by inserting after section 64D the following section:-

Section 64E. (a) As used in this section, the term "not-for-profit employer" shall include eligible organizations incorporated under section 501(c) of the Internal Revenue Code, that are established, organized or chartered under the laws of the commonwealth and doing business in the commonwealth and employing not more than 20 persons, but does not include a governmental employer.

(b) The state treasurer may conduct research regarding the current status of retirement programs available to not-for-profit employees and the appeal of creating a program for their benefit.

(c) The treasurer and receiver general, on behalf of the commonwealth, may sponsor a qualified defined contribution plan within the meaning of section 414(i) of the Internal Revenue Code, in this section called the Code, that may be adopted by not-for-profit employers for their employees in accordance with section 401(a) of the Code, regulations provided under that section and applicable guidance from the Internal Revenue Service. The treasurer shall obtain approval from the Internal Revenue Service with respect to the plan and shall ensure the administration of the plan is in compliance with the Code and other applicable federal and state laws including the Employee Retirement Income Security Act of 1974, in this section called ERISA.

The plan shall provide for a qualified trust under said section 401(a), with contributions made to the trust by the not-for-profit employer, the employer's employees, or both. Under the trust instrument, any part of the corpus or income shall not be used for, or diverted to, purposes other than the exclusive benefit of employees or their beneficiaries at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries. In order to participate in the plan, a not-for-profit employer shall execute a participation agreement, agree to the terms of the plan and operate the plan in compliance with the Code and ERISA. The treasurer may require that the not-for-profit employer sign a service agreement and use forms and procedures prescribed by the treasurer. The treasurer may also require that certain employers seek approval of their plans from the Internal Revenue Service.

(d) The treasurer may contract with practitioners, administrators, investment managers and other entities, including the pension reserves investment management board, in order to design, administer and provide investment options under the plan. The treasurer shall, before making any such contract, solicit bids from companies authorized to conduct business within the commonwealth, which shall be sealed and opened at a time and place designated by the treasurer. A submitted bid shall, where applicable, clearly indicate the interest rate which shall be paid on the deferred funds, any commissions which shall be paid to salespersons, any load imposed for the purpose of administering the funds, mortality projections, expected payouts, tax implications for participating employees and such other information as the treasurer may require. A contract entered into between an employee and the not-for-profit employer pursuant to this section shall include all such information in terms the employee can reasonably be expected to understand. Upon a determination by the treasurer as to which provider offers the investment options most beneficial to the employee in each category for which bids were solicited, the employee may choose the investment option for the employee’s account.

Notwithstanding any general or special law to the contrary, the treasurer shall not be required to solicit bids to invest the contributed portion of an employee's income into the employee's defined contribution plan account provided: (i) that the treasurer is authorized by the employee to pay that portion of the employee's compensation into the employee's defined contribution plan account in the same investment products as provided through a deferred compensation plan for employees of the commonwealth administered by the treasurer, and (ii) that such plan resulted from the solicitation of bids in accordance with the requirements under this section.

(e) There shall be in the office of the treasurer and receiver general a not-for-profit defined contribution committee. The committee shall consist of the treasurer or a designee, who shall serve as chairperson, and 4 persons to be appointed by the treasurer, 2 of whom shall have practical experience in the human services, educational or public and societal benefit sector of the non-profit community, and 2 of whom shall be currently employed by not-for-profit corporations. Each member shall be appointed for a term of 3 years, except 1 of whom who is currently employed by not-for-profit corporations shall be appointed initially for a term of 2 years and all of whom shall be eligible for reappointment. In the case of a vacancy, a successor shall be appointed for a full term or for the unexpired portion thereof, as the case may be. A member of the committee shall be eligible for reappointment. The committee shall annually elect 1 of its members to serve as vice-chairperson. The committee shall meet from time to time and assist the treasurer in the development of general policy regarding the program, and shall provide technical advice and input to the state treasurer. The members of the committee shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(f) The treasurer is hereby authorized to adopt rules and regulations related to this section and do all things convenient to carry out the provisions and purposes of this section.

SECTION 2. This act shall not apply to not-for-profit employers that sponsor, administer or offer a defined contribution plan, defined benefit plan, deferred compensation plan or other tax-deferred retirement savings plan to their employees as of November 1, 2011.

SECTION 3. Section 2 is hereby repealed.

SECTION 4. Section 3 shall take effect on January 1, 2014.

SECTION 5. Notwithstanding any general or special law or rule or regulation to the contrary, small nonprofits doing business in the commonwealth may aggregate for the purposes of offering a pension.

Approved, March 22, 2012.

New Jersey

CHAPTER 298

AN ACT establishing a retirement savings marketplace and supplementing Title 43 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.43:23-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Small Business Retirement Marketplace Act."

C.43:23-2 Findings, declarations relative to a New Jersey Small Business Retirement Marketplace.

2. The Legislature finds and declares that:

a. it is appropriate to create a New Jersey Small Business Retirement Marketplace because there is a retirement savings gap in this State, one in six Americans retire in poverty, and employees who are unable to effectively build their retirement savings risk living on low incomes in their elderly years and are more likely to become dependent on State services;

b. small businesses, which employ half of New Jersey's private workforce, often choose not to offer retirement plans to employees due to concerns about the cost, administrative burden, and potential liability that they believe would be placed on their businesses;

c. the federal government has attempted to address the savings gap by establishing the myRA program, a safe, affordable, and accessible retirement vehicle designed to remove barriers to retirement savings;

d. the New Jersey Small Business Retirement Marketplace will remove the barriers to entry into the retirement market for small businesses by educating small employers on plan availability and promoting, without mandating participation, qualified, low cost, low burden retirement savings vehicles and myRA; the marketplace furthers greater retirement plan access for the residents of New Jersey while ensuring that individuals participating in these retirement plans will have all the protections offered by federal law;

e. the New Jersey Small Business Retirement Marketplace should not place any financial burden upon taxpayers in the State and it should not be implemented if it is determined that there is any financial exposure to the State;

f. the New Jersey Small Business Retirement Marketplace will be the best way for New Jersey to close the retirement savings access gap, protect the fiscal stability of the State and its citizens well into the future, become a national leader in retirement and investor promotion and protection, and educate and promote retirement saving among employees and small employers;

g. according to a recent AARP poll, 86 percent of New Jersey residents age 35 and older say they hope to retire one day, but 65 percent are anxious about saving enough money so they could afford it, and AARP estimates that roughly 1.7 million private sector workers in New Jersey do not have access to a retirement savings plan through their employer, and the National Institute of Retirement Security describes this as a growing consumer crisis, because the typical family has saved only $2,500 for their retirement;

h. AARP has been instrumental in leading a national initiative called Work and Save to deal with retirement insecurity by promoting state run retirement programs, including the Washington Small Business Retirement Marketplace, signed into law in May 2015, designed to provide thousands of small business employees access to retirement plans by creating a voluntary public-private partnership marketplace that will educate small business employers on existing private sector retirement plan vendors;

i. the Washington marketplace was the result of public and private organizations coming together to find the most effective and efficient way to close the retirement savings access gap, and the following organizations have endorsed the Washington marketplace: AARP, Securities Industry and Financial Markets Association, the American Council of Life Insurers, Washington Bankers Association, and various employer groups; and

j. by following this model, the New Jersey Small Business Retirement Marketplace will provide a market-based approach so that small businesses can offer a simple and inexpensive way to offer private savings to their employees, which will result in workers saving more for retirement throughout their lives.

C.43:23-3 Definitions relative to a New Jersey Small Business Retirement Marketplace.

3. As used in this act:

"Approved plans" means retirement plans offered by private sector financial services firms that meet the requirements of this act to participate in the marketplace.

"Balanced fund" means a mutual fund that has an investment mandate to balance its portfolio holdings and generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.

"Eligible employer" means a person, firm, corporation, partnership, or sole proprietor, or any other employer that is actively engaged in business with fewer than 100 qualified employees at the time of enrollment, and a majority of which employees are employed in New Jersey.

"Enrollee" means any employee who is voluntarily enrolled in an approved plan offered by an eligible employer through the marketplace.

"myRA" means the myRA retirement program administered by the United States Department of the Treasury that is available to all employers and employees with no fees or no minimum contribution requirements. "myRA" is a Roth IRA option, and investments in these accounts are backed by the United States Department of the Treasury.

"New Jersey Small Business Retirement Marketplace" or "marketplace" means the retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings.

"Participating employer" means any eligible employer with employees enrolled in an approved plan offered through the New Jersey Small Business Retirement Marketplace who chooses to participate in the marketplace and offers approved plans to employees for voluntary enrollment.

"Private sector financial services firms" or "financial services firms" means persons or entities licensed or holding a certificate of authority or authorized to do business in the State, in good standing by the Department of Banking and Insurance and the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety, and meeting all federal laws and regulations to offer retirement plans.

"Qualified employee" means those workers who are defined by the federal Internal Revenue Service to be eligible to participate in a specific qualified plan.

"Target date or other similar fund" means a mutual fund that automatically resets the asset mix of stocks, bonds, cash equivalents, and other investments in its portfolio according to a selected time frame that is appropriate for a particular investor and is structured to address a projected retirement date.

C.43:23-4 New Jersey Small Business Retirement Marketplace.

4. There is established the New Jersey Small Business Retirement Marketplace in the Department of the Treasury.

C.43:23-5 Plan for the operation of the marketplace.

5. a. The State Treasurer, or the Treasurer's designee, shall design and implement a plan for the operation of the marketplace pursuant to the provisions of this act. Thereafter, the State Treasurer, or the Treasurer's designee, shall facilitate the connections between eligible employers and approved plans included in the marketplace.

b. The State Treasurer, or the Treasurer's designee, shall consult with the Director of Investment of the Department of the Treasury, or the director's designee; the Commissioner of Banking and Insurance, or the commissioner's designee; the Commissioner of Labor and Workforce Development, or the commissioner's designee; the Chairperson of the State Investment Council, or the chairperson's designee; the Director of the Division of Pensions and Benefits, or the director's designee; and the Chief Executive Officer of the New Jersey Economic Development Authority, or the chief executive office's designee, in designing and managing the marketplace.

c. The State Treasurer, or the Treasurer's designee, shall approve private sector financial services firms as defined in section 3 of this act for participation in the marketplace. The State Treasurer, or the Treasurer's designee, shall ensure that the range of investment options offered by the financial services firms is sufficient to meet the needs of investors with various levels of risk tolerance and various ages.

d. The State Treasurer, or the Treasurer's designee, shall approve a diverse array of private retirement plan options that are available to employers on a voluntary basis, including life insurance plans that are designed for retirement purposes, and at least two types of plans for eligible employer participation, including:

(1) a SIMPLE IRA type plan that provides for employer contributions to participating enrollee accounts; and

(2) a payroll deduction individual retirement account type plan or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' account.

e. Prior to approving a plan to be offered on the marketplace, the State Treasurer, or the Treasurer's designee, shall obtain certification from the Department of Banking and Insurance and the Bureau of Securities in the Division of Consumer Affairs in the Department of Law and Public Safety that the financial services firm providing the plan is in good standing with the department and the bureau and shall ensure that the plan meets the requirements of this act. The State Treasurer, or the Treasurer's designee, may at any time remove any approved plan from the marketplace that no longer meets the requirements of this act.

f. The financial services firms participating in the marketplace shall offer a minimum of two product options, including:

(1) a target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement; and

(2) a balanced fund.

The marketplace shall offer myRA in addition to any other approved plan.

g. The marketplace shall not operate unless there are at least two financial services firms offering approved plans on the marketplace; however, nothing in this section shall be construed as to limit the number of financial services firms with approved plans participating in the marketplace.

h. The State Treasurer, or the Treasurer's designee, shall ensure that approved plans are compliant with any federal law or regulation regarding Internal Revenue Service approved retirement plans.

i. Approved plans shall include the option for enrollees to roll pretax contributions into a different individual retirement account or another eligible retirement plan after ceasing participation in a plan approved by the marketplace.

j. Financial services firms selected by the State Treasurer, or the Treasurer's designee, to offer approved plans on the marketplace shall not charge the participating employer an administrative fee or surcharge and shall not charge enrollees more than 100 basis points in total annual fees and shall provide information about their product's historical investment performance.

k. Participation in the marketplace is voluntary for both eligible employers and qualified employees, and enrollment in any approved plan offered in the marketplace is not an entitlement.

l. The State Treasurer, or the Treasurer's designee, shall establish protocol to address rollovers for eligible employers that have workers in other states, and to address whether out-of-State employees with existing IRAs may roll them into the plans offered through the marketplace.

m. The State Treasurer, or the Treasurer's designee, may establish a fee system that charges financial services firms that participate in the marketplace in order to cover the startup and annual administrative expenses of the State Treasurer, or the Treasurer's designee, in the performance of its duties under this act.

C.43:23-6 Contracts with private sector entities.

6. a. The State Treasurer, or the Treasurer's designee, shall contract with one or more private sector entities to:

(1) establish a protocol for reviewing and approving the qualifications of all financial services firms that meet the requirements to participate in the marketplace;

(2) design and operate an Internet website that includes information on how eligible employers can voluntarily participate in the marketplace;

(3) develop marketing materials about the marketplace that can be distributed electronically or posted on both public and private sector maintained websites;

(4) identify and promote existing federal and State tax credits and benefits for employers and employees that are related to encouraging retirement savings or participating in retirement plans; and

(5) promote the benefits of retirement savings and other information that promotes financial literacy.

b. The State Treasurer, or the Treasurer's designee, shall direct any private sector entity contracted pursuant to subsection a. of this section to assure that licensed professionals who assist their clients that are eligible employers or their employees to enroll in a plan offered through the marketplace will receive routine, market-based commissions or other compensation for their services.

c. The State Treasurer, or the Treasurer's designee, shall establish rules to ensure that there are objective criteria in the protocol established pursuant to subsection a.(1) of this section and that the protocol does not provide an unfair advantage to the private sector entity that establishes the protocol.

C.43:23-7 Use of private funding sources.

7. In addition to any funds appropriated for the purposes of this act, the State Treasurer, or the Treasurer's designee, shall approve the use of private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the Department of the Treasury shall seek federal and private grants and is authorized to accept any funds awarded to the State Treasurer, or the Treasurer's designee, for use in designing, implementing, and operating the marketplace.

C.43:23-8 Avoidance of liability.

8. The Department of the Treasury shall not expose the State as an employer or through administration of the marketplace to any liability under the federal "Employee Retirement Income Security Act of 1974" (29 U.S.C. s.1001 et seq.). The Department of the Treasury is specifically prohibited from offering and operating a State-sponsored retirement plan for businesses for individuals who are not employed by the State, or any political subdivision thereof.

C.43:23-9 Incentive payment to participating employers.

9. The State Treasurer, or the Treasurer's designee, shall approve incentive payments to participating employers that enroll in the marketplace if there are sufficient funds provided by private foundations or other private sector entities, or with State funds specifically appropriated for this purpose.

C.43:23-10 Report to Legislature.

10. The State Treasurer, or the Treasurer's designee, shall report biennially to the Legislature on the effectiveness and efficiency of the marketplace, including levels of enrollment and the retirement savings levels of participating enrolled that are obtained in aggregate on a voluntary basis from private sector financial services firms that participate in the marketplace.

C.43:23-11 Compliance.

11. The State Treasurer, or the Treasurer's designee, shall ensure that any individual retirement account products proposed for inclusion in the marketplace comply with the requirements of section 5 of this act.

C.43:23-12 Regulations.

12. The Department of the Treasury shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of this act. In promulgating regulations, the State Treasurer, or the Treasurer's designee, shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, private sector financial services firms, and any other individuals or entities that the State Treasurer, or the Treasurer's designee, determine relevant to the effective and efficient method for effectuating the purposes of this act.

13. This act shall take effect immediately.

Approved January 19, 2016.

Oregon

CHAPTER 557

AN ACT HB 2960

Relating to retirement investments; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. **Oregon Retirement Savings Board.** **(1) The Oregon Retirement Savings Board is established in the office of the State Treasurer. The board consists of seven members as follows:**

(a) The State Treasurer or the designee of the State Treasurer.

(b) The following members appointed by the Governor:

(A) A representative of employers.

(B) A representative with experience in the field of investments.

(C) A representative of an association representing employees.

(D) A public member who is retired.

(c) A member of the Senate appointed by the President of the Senate to be a nonvoting advisory member of the board.

(d) A member of the House of Representatives appointed by the Speaker of the House of Representatives to be a nonvoting advisory member of the board.

(2) Members of the board appointed by the Governor must be confirmed by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(3) The term of office of each member of the board appointed by the Governor is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) Each legislative member serves at the pleasure of the appointing authority and may serve as long as the member remains in the chamber of the Legislative Assembly from which the member was appointed.

(5) The State Treasurer or the designee appointed to the board under subsection (1) of this section shall serve as chairperson of the board.

(6) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(7) A member of the board appointed by the Governor is entitled to compensation and expenses as provided in ORS 292.495. A legislative member shall receive compensation and expenses as provided in ORS 171.072.

(8) The office of the State Treasurer shall provide staff support to the board.

SECTION 2. **Powers and duties of Oregon Retirement Savings Board.** **(1) The Oregon Retirement Savings Board shall develop a defined contribution retirement plan for persons employed for compensation in this state and conduct a market and legal analysis of the plan.**

(2) The board shall have the following powers:

(a) To establish, implement and maintain the plan developed under this section.

(b) To adopt rules for the general administration of the plan as provided in section 4 of this 2015 Act.

(c) To direct the investment of the funds contributed to accounts in the plan consistent with the investment restrictions established by the board. The investment restrictions must be consistent with the objectives of the plan, and the board shall exercise the judgment and care then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs with due regard to the probable income and level of risk from certain types of investments of money, in accordance with the policies established by the board.

(d) To collect application, account or administrative fees to defray the costs of administering the plan.

(e) To make and enter into contracts, agreements or arrangements, and to retain, employ and contract for any of the following considered necessary or desirable, for carrying out the purposes set forth in sections 1 to 10 of this 2015 Act:

(A) Services of private and public financial institutions, depositories, consultants, investment advisers, investment administrators and third-party plan administrators.

(B) Research, technical and other services.

(C) Services of other state agencies to assist the board in its duties.

(f) To evaluate the need for, and procure as needed, pooled private insurance of the plan.

(g) To develop and implement an outreach plan to gain input and disseminate information regarding the plan and retirement savings in general.

SECTION 3. **Requirements for Oregon Retirement Savings Plan.** **(1) The plan developed and established by the Oregon Retirement Savings Board under section 2 of this 2015 Act must:**

(a) Allow eligible individuals employed for compensation in this state to contribute to an account established under the plan through payroll deduction.

(b) Require an employer to offer its employees the opportunity to contribute to the plan through payroll deductions unless the employer offers 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.

(c) Provide for automatic enrollment of employees and allow employees to opt out of the plan.

(d) Have a default contribution rate set by the board by rule.

(e) Offer default escalation of contribution levels that can be increased or decreased within the limits allowed by the Internal Revenue Code.

(f) Provide for contributions to the plan to be deposited directly with the investment administrator for the plan.

(g) Whenever possible, use existing employer and public infrastructure to facilitate contributions to the plan, recordkeeping and outreach.

(h) Require no employer contributions to employee accounts.

(i) Require the maintenance of separate records and accounting for each plan account.

(j) Provide for reports on the status of plan accounts to be provided to plan participants at least annually.

(k) Allow for account owners to maintain an account regardless of place of employment and to roll over funds into other retirement accounts.

(L) Pool accounts established under the plan for investment.

(m) Be professionally managed.

(n) Provide that the State of Oregon and employers that participate in the plan have no proprietary interest in the contributions to or earnings on amounts contributed to accounts established under the plan.

(o) Provide that the investment administrator for the plan is the trustee of all contributions and earnings on amounts contributed to accounts established under the plan.

(p) Not impose any duties under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) on employers.

(q) Keep administration fees in the plan low.

(r) Allow the use of private sector partnerships to administer and invest the contributions to the plan under the supervision and guidance of the board.

(s) Allow employers to establish an alternative retirement plan for some or all employees.

(2) The plan, the board, each board member and the State of Oregon may not guarantee any rate of return or any interest rate on any contribution. The plan, the board, each board member and the State of Oregon may not be liable for any loss incurred by any person as a result of participating in the plan.

SECTION 4. Rules for Oregon Retirement Savings Plan. The Oregon Retirement Savings Board shall adopt rules that:

(1) Establish the process for voluntary enrollment in the plan developed under section 2 of this 2015 Act, including procedures for automatic enrollment of employees and for employees to opt out of the plan.

(2) Establish the process for participants to make the default contributions to plan accounts and to adjust the contribution levels.

(3) Establish the process for employers to withhold employee contributions to plan accounts from employees' wages and send the contributions to the investment administrator for the plan.

(4) Establish the process for allowing employees to opt out of enrollment in the plan.

(5) Establish the process for participants to make nonpayroll contributions to plan accounts.

(6) Set minimum, maximum and default contribution levels in accordance with limits established by the Internal Revenue Code.

(7) Establish the process for withdrawals from plan accounts.

(8) Establish the process and requirements for an employer to obtain an exemption from offering the plan if the employer offers 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.

(9) Mandate the contents and frequency of required disclosures to employees, employers and other plan participants. These disclosures must include, but need not be limited to:

(a) The benefits and risks associated with making contributions to the plan;

(b) Instructions for making contributions to the plan;

(c) How to opt out of the plan;

(d) How to participate in the plan with a level of contributions other than the default rate;

(e) The process for withdrawal of retirement savings;

(f) How to obtain additional information about the plan;

(g) That employees seeking financial advice should contact financial advisers, that participating employers are not in a position to provide financial advice and that participating employers are not liable for decisions employees make pursuant to sections 1 to 10 of this 2015 Act;

(h) That the plan is not an employer-sponsored retirement plan; and

(i) That the plan accounts and rate of return are not guaranteed by the state.

SECTION 5. Confidentiality of account information. Individual account information for accounts under the plan developed under section 2 of this 2015 Act, including but not limited to names, addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, is confidential and must be maintained as confidential:

(1) Except to the extent necessary to administer the plan developed under section 2 of this

2015 Act in a manner consistent with sections 1 to 10 of this 2015 Act, the tax laws of this state and the Internal Revenue Code; or

(2) Unless the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed.

SECTION 6. Oregon Retirement Savings Plan Administrative Fund. (1) The Oregon Retirement Savings Plan Administrative Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Retirement Savings Plan Administrative Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Retirement Savings Board.

(2) The Oregon Retirement Savings Plan Administrative Fund consists of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Moneys transferred to the fund from the federal government, other state agencies or local governments;

(c) Moneys from the payment of fees and the payment of other moneys due the board;

(d) Any gifts or donations made to the State of Oregon for deposit in the fund; and

(e) Earnings on moneys in the fund.

(3) The board may use the moneys in the fund to pay the administrative costs and expenses of the board and the plan developed under section 2 of this 2015 Act and for any other purpose described in sections 1 to 10 of this 2015 Act.

SECTION 7. Prerequisites to establishment of Oregon Retirement Savings Plan. (1) Before establishing a plan developed under section 2 of this 2015 Act, the Oregon Retirement Savings Board shall:

(a) Conduct a market analysis to determine:

(A) The feasibility of the plan.

(B) Whether and to what extent plans with the characteristics described in section 3 of this 2015 Act currently exist in the private market.

(b) Obtain legal advice regarding the applicability of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and the Internal Revenue Code to the plan.

(c) Investigate whether employers that are not required to participate in the plan can make the plan available to their employees.

(d) Investigate how to allow individuals who are not automatically enrolled in the plan to opt in to the plan and make contributions to an account, either through payroll contributions or another method of contribution.

(2) The board shall coordinate with the efforts of other states as those states pursue legal guidance for similar retirement savings programs.

SECTION 8. Annual reports. The Oregon Retirement Savings Board shall report in each calendar year to the Governor and to an appropriate committee or interim committee of the Legislative Assembly detailing the board's activities.

SECTION 9. Preemption. A local government, as defined in ORS 174.116, may not establish or offer any retirement plan for persons not employed by a public body as defined in ORS 174.109.

SECTION 10. State agencies to assist with outreach, technical assistance and compliance services. The Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the Oregon Retirement Savings Board to provide outreach, technical assistance or compliance services shall collaborate to provide the outreach, technical assistance or compliance services to the board.

SECTION 11. (1) The Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the Oregon Retirement Savings Board to provide outreach, technical assistance or compliance services shall develop a plan for providing the outreach, technical assistance or compliance services to the board as required by section 10 of this 2015 Act.

(2) On or before January 1, 2016, the Secretary of State, the Department of Revenue, the Employment Department, the Department of Consumer and Business Services, the Bureau of Labor and Industries and any other agency that enters into an intergovernmental agreement with the board to provide outreach, technical assistance or compliance services shall report to the board on the plan developed under subsection (1) of this section and the timeline for implementing the plan.

SECTION 12. In addition to and not in lieu of any other appropriation, there is appropriated to the State Treasurer, for the biennium beginning July 1, 2015, out of the General Fund, the following amounts, for the following purposes:

(1) $250,000, which may be expended only for reimbursing other state agencies for providing outreach or technical assistance services for the Oregon Retirement Savings Board.

(2) $743,541, which may be expended only for operating expenses of the Oregon Retirement Savings Board.

<u>SECTION 13.</u> **Notwithstanding the provisions of section 6 of this 2015 Act, as soon as is practicable, the State Treasurer shall transfer an amount equal to the total amount of appropriations made under section 12 of this 2015 Act from the Oregon Retirement Savings Plan Administrative Fund to the General Fund.**

<u>SECTION 14.</u> **The Oregon Retirement Savings Board shall report to a committee or interim committee of the Legislative Assembly related to retirement investments on or before December 31, 2016. The report must include:**

(1) The results of the market analysis sought by the board under section 7 of this 2015 Act.

(2) The findings from legal advice obtained by the board under section 7 of this 2015 Act.

(3) An analysis of potential costs to employers, including administrative costs, associated with providing automatic payroll deductions for participation in the plan, and recommendations on how to eliminate or reduce those costs through incentives, tax credits or other means.

(4) A draft of the request for proposals to solicit bids from plan administrators.

(5) A timeline for implementation of the plan developed under section 2 of this 2015 Act.

(6) An overview of any contracts entered into by the board in the performance of its duties.

(7) Recommendations to the Legislative Assembly regarding ways to increase financial literacy in this state.

<u>SECTION 15.</u> **(1) Except as provided in subsection (2) of this section, the Oregon Retirement Savings Board shall establish the retirement plan developed under section 2 of this 2015 Act so that individuals may begin making contributions to the plan no later than July 1, 2017.**

(2) If the board determines that the plan developed by the board under section 2 of this 2015 Act would qualify as an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), the board may not establish the plan.

<u>SECTION 16.</u> **(1) The Governor, the President of the Senate and the Speaker of the House of Representatives shall first make appointments to the Oregon Retirement Savings Board for terms of office beginning on September 1, 2015.**

(2) Notwithstanding the term of office specified by section 1 of this 2015 Act, of the members first appointed to the Oregon Retirement Savings Board by the Governor:

(a) One shall serve for a term ending August 31, 2017.

(b) One shall serve for a term ending August 31, 2018.

(c) Two shall serve for a term ending August 31, 2019.

<u>SECTION 17.</u> **The section captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.**

<u>SECTION 18.</u> **This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

Approved by the Governor June 25, 2015
Filed in the office of Secretary of State June 29, 2015
Effective date June 25, 2015

Washington

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5826

Chapter 296, Laws of 2015

64th Legislature
2015 Regular Session

WASHINGTON SMALL BUSINESS RETIREMENT MARKETPLACE

EFFECTIVE DATE: 7/24/2015

Passed by the Senate April 21, 2015
Yeas 27 Nays 22

BRAD OWEN

President of the Senate

Passed by the House April 10, 2015
Yeas 57 Nays 40

FRANK CHOPP

Speaker of the House of Representatives

Approved May 18, 2015 2:25 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5826** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 18, 2015

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5826

AS AMENDED BY THE HOUSE

Passed Legislature - 2015 Regular Session

State of Washington 64th Legislature 2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Mullet and Benton)

READ FIRST TIME 02/27/15.

AN ACT Relating to creating the Washington small business retirement marketplace; adding new sections to chapter 43.330 RCW; adding a new section to chapter 43.320 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature finds that there is a retirement savings access gap in Washington; that Americans reach the median salary four years later than they did in 1980 and therefore have four fewer years of savings opportunities; and that one in six Americans retire in poverty. Employees who are unable to effectively build their retirement savings risk living on low incomes in their elderly years and are more likely to become dependent on state services. Further, small businesses, which employ more than forty percent of private sector employees in Washington, often choose not to offer retirement plans to employees due to concerns about costs, administrative burdens, and potential liability that they believe such plans would place on their business. In response, the legislature recognizes the work of the federal government in addressing these issues by establishing the myRA program: A safe, affordable, and accessible retirement vehicle designed to remove barriers to retirement savings. In addition, the legislature recognizes that many private financial services firms in Washington currently offer high quality retirement options for small businesses and their employees.

The Washington small business retirement marketplace will remove barriers to entry into the retirement market for small businesses by educating small employers on plan availability and promoting, without mandated participation, qualified, low-cost, low-burden retirement savings vehicles and myRA. The marketplace furthers greater retirement plan access for the residents of Washington while ensuring that individuals participating in these retirement plans will have all the protections offered by the employee retirement income security act. Further, the Washington small business retirement marketplace will not pose any significant financial burden upon taxpayers. The Washington small business retirement marketplace will be the best way for Washington to close the retirement savings access gap, protect the fiscal stability of the state and its citizens well into the future, and further cement its place as a national leader in retirement and investor promotion and protection. The marketplace will educate and promote retirement saving among employees and in particular market to small employers with fifty or fewer employees.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Approved plans" means retirement plans offered by private sector financial services firms that meet the requirements of this chapter to participate in the marketplace.

(2) "Balanced fund" means a mutual fund that has an investment mandate to balance its portfolio holdings. The fund generally includes a mix of stocks and bonds in varying proportions according to the fund's investment outlook.

(3) "Eligible employer" means a self-employed individual, sole proprietor, or an employer with fewer than one hundred qualified employees at the time of enrollment.

(4) "Enrollee" means any employee who is voluntarily enrolled in an approved plan offered by an eligible employer through the Washington small business retirement marketplace.

(5) "myRA" means the myRA retirement program administered by the United States department of the treasury that is available to all employers and employees with no fees or no minimum contribution

requirements. A myRA is a Roth IRA option and investments in these accounts are backed by the United States department of the treasury.

(6) "Participating employer" means any eligible employer with employees enrolled in an approved plan offered through the Washington small business retirement marketplace who chooses to participate in the marketplace and offers approved plans to employees for voluntary enrollment.

(7) "Private sector financial services firms" or "financial services firms" mean persons or entities licensed or holding a certificate of authority and in good standing by either the department of financial institutions or the office of the insurance commissioner and meeting all federal laws and regulations to offer retirement plans.

(8) "Qualified employee" means those workers who are defined by the federal internal revenue service to be eligible to participate in a specific qualified plan.

(9) "Target date or other similar fund" means a hybrid mutual fund that automatically resets the asset mix of stocks, bonds, and cash equivalents in its portfolio according to a selected time frame that is appropriate for a particular investor. A target date is structured to address a projected retirement date.

(10) "Washington small business retirement marketplace" or "marketplace" means the retirement savings program created to connect eligible employers and their employees with approved plans to increase retirement savings.

NEW SECTION. **Sec. 3.** (1) The Washington small business retirement marketplace is created.

(2) Prior to connecting any eligible employer with an approved plan in the marketplace, the director shall design a plan for the operation of the marketplace.

(3) The director shall consult with the Washington state department of retirement systems, the Washington state investment board, and the department of financial institutions in designing and managing the marketplace.

(4) The director shall approve for participation in the marketplace all private sector financial services firms that meet the requirements of section 2(7) of this act.

(5) A range of investment options must be provided to meet the needs of investors with various levels of risk tolerance and various

ages. The director must approve a diverse array of private retirement plan options that are available to employers on a voluntary basis, including life insurance plans that are designed for retirement purposes, and at least two types of plans for eligible employer participation: (a) A SIMPLE IRA-type plan that provides for employer contributions to participating enrollee accounts; and (b) a payroll deduction individual retirement account type plan or workplace-based individual retirement accounts open to all workers in which the employer does not contribute to the employees' account.

(6) Prior to approving a plan to be offered on the marketplace, the department must receive verification from the department of financial institutions and the office of the insurance commissioner (a) that the private sector financial services firm offering the plan meets the requirements of section 2(7) of this act; and (b) that the plan meets the requirements of this section excluding subsection (9) of this section which is subject to federal laws and regulations. The director may remove approved plans that no longer meet the requirements of this chapter.

(7) The financial services firms participating in the marketplace must offer a minimum of two product options: (a) A target date or other similar fund, with asset allocations and maturities designed to coincide with the expected date of retirement and (b) a balanced fund. The marketplace must offer myRA.

(8) In order for the marketplace to operate, there must be at least two financial services firms offering approved plans on the marketplace; however, nothing in this subsection shall be construed to limit the number of private sector financial services firms with approved plans from participating in the marketplace.

(9) Approved plans must meet federal law or regulation for internal revenue service approved retirement plans.

(10) The approved plans must include the option for enrollees to roll pretax contributions into a different individual retirement account or another eligible retirement plan after ceasing participation in a plan approved by the Washington small business retirement marketplace.

(11) Financial services firms selected by the department to offer approved plans on the marketplace may not charge the participating employer an administrative fee and may not charge enrollees more than one hundred basis points in total annual fees and must provide information about their product's historical investment performance.

(12) Participation in the Washington small business retirement marketplace is voluntary for both eligible employers and qualified employees.

(13) Enrollment in any approved plan offered in the marketplace is not an entitlement.

NEW SECTION. **Sec. 4.** (1) The director shall contract with a private sector entity to:

(a) Establish a protocol for reviewing and approving the qualifications of all private sector financial services firms that meet the qualifications to participate in the marketplace;

(b) Design and operate an internet web site that includes information about how eligible employers can voluntarily participate in the marketplace;

(c) Develop marketing materials about the marketplace that can be distributed electronically, posted on agency web sites that interact with eligible employers, or inserted into mail from the department of revenue, department of labor and industries, employment security department, the office of minority and women's business enterprises, department of licensing, and secretary of state's division of corporations;

(d) Identify and promote existing federal and state tax credits and benefits for employers and employees that are related to encouraging retirement savings or participating in retirement plans; and

(e) Promote the benefits of retirement savings and other information that promotes financial literacy.

(2) The director shall address how rollovers are handled for eligible Washington employers that have workers in other states, and whether out-of-state employees with existing IRA's can roll them into the plans offered through the Washington small business retirement marketplace.

(3) The director shall direct the entity retained pursuant to subsection (1) of this section to assure that licensed professionals who assist their eligible business clients or employees to enroll in a plan offered through the Washington small business retirement marketplace may receive routine, market-based commissions or other compensation for their services.

(4) The director shall ensure by rule that there is objective criteria in the protocol provided in subsection (1)(a) of this

section and that the protocol does not provide unfair advantage to the private sector entity which establishes the protocol.

(5) The director shall encourage the participation of private sector financial services firms in the marketplace.

NEW SECTION. **Sec. 5.** In addition to any appropriated funds, the director may use private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the department shall seek federal and private grants and is authorized to accept any funds awarded to the department for use in the marketplace.

NEW SECTION. **Sec. 6.** The department shall not expose the state of Washington as an employer or through administration of the marketplace to any potential liability under the federal employee retirement income act of 1974. As such, the department is specifically prohibited from offering and operating a state-based retirement plan for businesses or individuals who are not employed by the state of Washington.

NEW SECTION. **Sec. 7.** Using funds specifically appropriated for this purpose, and funds provided by private foundations or other private sector entities, the director may provide incentive payments to participating employers that enroll in the marketplace.

NEW SECTION. **Sec. 8.** The director shall report biennially to the legislature on the effectiveness and efficiency of the Washington small business retirement marketplace, including the levels of enrollment and the retirement savings levels of participating enrollees that are obtained in aggregate on a voluntary basis from private sector financial services firms that participate in the marketplace.

NEW SECTION. **Sec. 9.** The director shall adopt rules necessary to allow the marketplace to operate as authorized by this subchapter. As part of the rule development process, the director shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, organizations representing private sector financial services firms, and any other individuals or entities that the director determines relevant to the development of an effective and efficient method for operating the marketplace. The rules must be proposed by January 1st of the year of implementation and rules shall not be adopted until after the end of the regular legislative session of that year.

NEW SECTION. **Sec. 10.** A new section is added to chapter 43.320 RCW to read as follows:

The department of financial institutions, annually, or upon request of the department of commerce, must review individual retirement account products proposed for inclusion in the Washington small business retirement marketplace to confirm that the products comply with the requirements of section 3 of this act, except for those requirements that pertain to federal laws and regulations.

NEW SECTION. **Sec. 11.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act are each added to chapter 43.330 RCW and codified with the subchapter heading of "Washington small business retirement marketplace."

Passed by the Senate April 21, 2015.
Passed by the House April 10, 2015.
Approved by the Governor May 18, 2015.
Filed in Office of Secretary of State May 18, 2015.

Appendix H – Segal Consulting Table of States with Enacted Legislation

State Payroll-Deduction Retirement Savings Programs						
	CA	CT	IL	MA	MD	OR
Program Type	Payroll deduction to a traditional IRA	Payroll deduction to a Roth IRA; option to change to a traditional IRA	Payroll deduction to a Roth IRA	401(k) plan subject to ERISA	Payroll deduction to an IRA	Payroll deduction to a Roth IRA
Covered Employers	Mandatory for all employers with 5+ employees that do not offer a plan	Mandatory for tall employers with 5+ employees that do not offer a plan	Mandatory for all employers with 25+ employees that do not offer a plan	Voluntary for nonprofit organizations with 20 or fewer employees	Mandatory for all employers with 10+ employees that do not offer a plan	Mandatory for all employers that do not offer a plan
Automatic Enrollment	3% of pay with opt-out	3% of pay with opt-out	3% of pay with opt-out	6% of pay (unless employer chooses 4%) with auto-escalation up to 10% of pay	Default % determined by Board with opt-out	5% of pay with opt-out
Investment Structure	Target-date funds and other pooled accounts	Recommend 50% + of account in life-income investment	Target-date funds and other pooled accounts	Pooled accounts	To be determined by Board	Target-date funds and capital preservation funds
Current Status of Program	Legislation enacted 9/2012 established Board; legislation enacted 9/2016 to approve program	Legislation enacted 5/2016 to establish program with parameters	Legislation enacted 1/2015 to establish Board to administer plan with parameters	Legislation enacted 03/2012 to establish program administered by State Treasurer	Legislation enacted 5/2016 to establish program and incentive for employers	Legislation enacted 6/2015; program to begin mid-2017

Source: Segal Consulting using information from the Georgetown University Center for Retirement Initiatives

Note: New Jersey and Washington State are developing retirement savings plan exchanges, and are not covered in this chart.

Appendix I – The Georgetown Center for Retirement Initiatives Report: Comparison of Retirement Plan Design Features, By State: Illinois, Oregon, Maryland, Connecticut, and California

GEORGETOWN UNIVERSITY
McCourt School of Public Policy
Center for Retirement Initiatives

Comparison of Retirement Plan Design Features[1], By State:
Illinois, Oregon, Maryland, Connecticut and California

State Brief 16-01

November 30, 2016
UPDATE

[1] 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. The state plans in this document are assumed to be covered under the new rule.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Bill Sponsor	Sen. Daniel Biss	Rep. Tobias Read, Rep. Jennifer Williamson and Sen. Lee Beyer	Del. William Frick and Sen. Douglas Peters	Rep. Joe Aresimowicz and Sen. Martin Looney	Sen. Kevin de León
Bill Number	SB 2758: Public Act 098-1150 (2015); Refer to 820 Illinois Compiled Statute 80 for subsequent amendments	HB 2960: Chapter 557 (2015)	HB 1378: Chapter 324 (2016) SB 1007: Chapter 323 (2016)	HB 5591: Public Act 16-29 (2016)	SB 1234: Chapter 804 (2016)
Bill Status	Enacted January 5, 2015, as amended by SB 2420 in 2016	Enacted June 25, 2015	Enacted May 10, 2016	Enacted May 27, 2016, as amended by Public Act 16-3	Enacted September 29, 2016
Implement if ERISA Applies[2]	No. The Board shall not implement the program if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act (ERISA).	No. The Board shall not establish the plan if it determines that the plan would qualify as an employee benefit plan under ERISA and/or applies to employers.	No. The Board shall take any action necessary to ensure that the program is not preempted by federal law.	No. The Authority will ensure that the Program meets all criteria for federal tax-deferral or tax-exempt benefits, and to prevent the program from being treated as an employee benefit plan under ERISA.	No. The Board shall not implement the program if it is determined that the program is an employee benefit plan under ERISA.

[2] As previously noted, 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. The state plans in this document are assumed to be covered under the new rule. Should there be a future determination that such savings arrangements are subject to ERISA, state laws have provisions about ERISA applicability.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Market, Feasibility and/or Legal Analysis Required	Not required by law; however, the Board is conducting a market analysis as a part of its pre-implementation planning.	Yes. The Board shall conduct market analysis to determine the feasibility of the plan and to what extent similar plans exist in the market; to obtain legal advice regarding the applicability of ERISA to plan design; and to study aspects of employer and employee participation in the plan.	Not required by law; however, the Board may conduct market and financial feasibility studies before the program becomes operational.	Yes. The Board shall conduct a study of the interest of participants and potential participants of the program in investing in a traditional IRA option. The study will include, but is not limited to: the number of participants whose incomes exceed federal limits for contributing to a Roth IRA, and the percentage of current participants that would prefer a tax-deferred savings option. The Board will submit a report not later than January 1, 2019 to the joint standing committee of the General Assembly. The Authority also may study the feasibility of making available through the state or the Authority a multiple-employer 401(k) plan or other tax-favored savings vehicle.	As required by the 2012 law Chapter 734, the market analysis was completed and submitted to the California Legislature on March 28, 2016.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Administrative Entity	The Illinois Secure Choice Savings Board. Board with seven (7) members: Treasurer (serving as chair); State Comptroller; Director of the Governor's Office of Management and Budget; two public representatives with expertise in retirement savings plan administration or investment appointed by Governor; a representative of participating employers appointed by Governor; and a representative of enrollees appointed by Governor. The Board is appointed and meets regularly.	The Oregon Retirement Savings Board with seven (7) members: Treasurer (serving as chair); and the Governor shall appoint: a representative of employers; a representative with experience in the field of investments; a representative of an association representing employees; and a public member who is retired. A member of the Senate is appointed by the President of the Senate; and a member of the House of Representatives is appointed by the Speaker of the House. The Board is appointed and meets regularly.	The Maryland Small Business Retirement Savings Board with eleven (11) members who will elect a chair from among the members: The State Treasurer, or the Treasurer's Designee; the Secretary of Labor, Licensing and Regulation, or the Secretary's Designee; nine members with expertise in retirement programs - three appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Delegates. The Board is appointed and held its first meeting on November 17, 2016.	The Connecticut Retirement Security Authority Board with fifteen (15) members and the chair to be selected by the Governor from among the members: Treasurer; Comptroller; Secretary of the Office of Policy and Management; Banking Commissioner; and Labor Commissioner all serving as ex officio voting members; one appointed by the Speaker of the House of Representatives; one appointed by the Majority leader of the House of Representatives; one appointed by the Minority leader of the House of Representatives; one appointed by the president pro tempore of the Senate; one appointed by the Majority leader of the Senate; one appointed by the Minority leader of the Senate; and four appointed by the Governor. All appointments shall be made not later than January 1, 2017.	The California Secure Choice Retirement Savings Investment Board with nine (9) members: Treasurer (serving as chair); Director of Finance; the Controller; an individual with retirement savings and investment expertise appointed by Senate Committee on Rules; an employee representative appointed by Speaker of the Assembly; a small business representative appointed by the Governor; a public member appointed by the Governor; two additional members appointed by the Governor. The Board, subject to its authority and fiduciary duty, shall design and implement the Program. The Board is appointed and meets regularly.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Employer Participation	Mandatory for certain employers, with 2-year delay for new businesses. Employers retain the option of providing a qualified plan available on the open market.	Mandatory. Employers must establish alternative qualified retirement plans for some or all of their employees if they choose not to facilitate.	Mandatory for all employers that pay employees through a payroll system or service. There is a 2-year deferral for new businesses. Employers retain the option of providing a plan available on the open market.	Mandatory. Employers retain the option of providing a plan available on the open market.	Mandatory. Employers retain the option at all times to set up a tax-qualified retirement plan instead of the state arrangement.
Employers Affected	Employers with 25 or more employees that have not offered a qualifying retirement plan in the preceding 2 years.	Employers that do not currently offer qualified plans.	All qualifying employers that do not currently offer plans.	Qualified employers with 5 or more employees that do not currently offer a plan.	Employers with 5 or more employees that do not already provide a qualified employer-sponsored retirement plan and satisfy the requirements to establish or participate in a payroll deposit retirement savings arrangement. Also, an employer of a provider of in-home supportive services, if determined to be eligible.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Penalties for Employer Non-Compliance	Yes. $250 per eligible employee to start.	Not Specified	Yes. If a covered employer is not in compliance, the covered employer may not receive a waiver of the State's $300 business filing fee. Applies only after program is open for enrollment.	Yes. The employee, or the Labor Commissioner, may bring a civil action to require the employer to enroll the covered employee and shall recover attorneys' fees.	Each eligible employer that, without good cause, fails to allow its eligible employees to participate in the program shall pay a penalty of $250 per eligible employee on or before 90 days after service of notice by the Director of the Employment Development Department. If found to be noncompliant 180 days or more after the notice, an additional penalty of $500 per eligible employee shall be paid by the employer.
Structure of Accounts	Roth IRA	Roth IRA – per proposed rule, with a Traditional IRA potentially offered in the future as an electable participant choice.	One or more payroll deposit IRA arrangements to be determined by the Board.	Roth IRA	One or more payroll deduction IRA arrangements to be determined by the Board.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Automatic Enrollment[3]	Yes	Yes	Yes	Yes	The Board will design and disseminate to employers an employee information packet which includes information on the program and appropriate disclosures including the mechanics of how to make contributions to the program. Employees must acknowledge that they have read all of the disclosures and understand their content.
Employee Opt-Out	Yes	Yes	Yes	Yes	Yes
Employee Re-Enrollment after Opt-Out	Yes, but only during designated open re-enrollment period which will be held at least once every year.	Not Specified	Yes, in accordance with procedures established by the Board.	Not Specified	Yes, but only during the designated open re-enrollment period which will be held at least once every two years.

[3]The DOL final rule allows the use of auto-enrollment only by those employers mandated to participate in a state-sponsored savings arrangement. For those employers below the employee threshold, the final rule would not allow employers to use auto-enrollment. For states such as Illinois, Oregon and Connecticut, utilization of automatic enrollment by small employers and individuals may be allowed if it does not create liability under ERISA. See section "Availability to Other Employers."

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Default Contribution Rate	3%	The Board has the administrative discretion to set the minimum, maximum and default contribution levels. By proposed rule, set at 5% standard, 1% minimum, and no maximum except for IRS limits.	The Board has the administrative discretion to set default, minimum and maximum employee contribution levels.	3%	3% (with Board discretion to adjust in the range of 2% to 5%). The Board may implement auto-escalation and, if so, auto-escalation cannot increase more than 1% per year and is capped at 8% of salary. An employee may opt out of auto-escalation and may set his or her own contribution rate.
Employer Contribution	Not permitted	Not permitted	Not specified	Not permitted	Permitted only if would not trigger ERISA.
Availability to Other Employers[4]	Yes. Employers with fewer than 25 employees may be allowed to participate. The Board will establish a process by which an individual may voluntarily enroll in and make contributions to the program.	To facilitate, employers must be covered by the state's mandate.	Yes, the Board may evaluate and establish the process by which an employee of a non-participating employer may participate.	Yes. A private employer with 4 employees or fewer may make the program available to its employees. No employer shall require any employee to enroll in the program.	Yes. Employees of non-participating employers and the self-employed may be allowed to contribute, with method and timing to be determined by the Board.

[4] See Footnote 3

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Tax & Other Incentives	Not specified and not currently planned.	Board can examine ways to reduce costs through incentives, tax credits or other means.	The state will waive the annual business filing fee of $300 per year for those qualifying employers who participate in the state program or otherwise provides auto-enroll IRA or annuity or an employer offered savings arrangement that is in compliance with federal law.	The Board shall disseminate information concerning the tax credits that may be available to small business owners for establishing new retirement plans.	Yes. Disseminate information about tax credits available to small businesses for allowing their employees to participate in the program and the use of federal Retirement Savings Contributions Credit (Saver's Credit) available to low- and moderate-income households to encourage retirement savings.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Investment of Assets	The Board shall establish investment options for enrollees to include: default life-cycle target date fund and any or all of the following: a conservative principal protection fund; a growth fund; a secure return fund; and an annuity fund. The Board has created a set of Investment Principles to guide future investment decisions.	By rule, investment of contributions in target date funds as a standard. Capital preservation likely to be offered as a participant election.	The Board shall evaluate and establish a range of investment options including a default investment selection for employees' payroll deposit IRAs. The Board may not 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.	The Authority shall provide for each participant's account to be invested in an age-appropriate target date fund with the vendor selected by the participant (or the program default option applies) or other investment vehicles as deemed feasible and cost effective by the Authority. The program will offer qualified retirement investment choices offered by multiple vendors. The assets must be held in trust or custodial accounts meeting the federal requirements for IRAs. 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.	For up to three years following initial implementation, the Board shall establish managed accounts invested in U.S. Treasuries, myRAs, or similar investments. During this period, the Board will develop and implement an investment policy that defines the program's investment objectives. Investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk to meet the investment objectives. Investment option recommendations may include, but are not limited to, the creation of a reserve fund or establishment of customized investment products, and may also address risk-sharing and smoothing of market losses and gains. After the initial three-year period described above, the Board will annually prepare and adopt a written statement of investment policy that includes a risk management and oversight program.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Investment Management and Liability	The Program Fund is established with the Board as its Trustee and moneys in the fund from enrollees and participating employers will be held as pooled investments to achieve cost savings through efficiencies and economies of scale. The Board will engage outside investment firms, as needed, and select investment options that do not incur debt or liabilities to the state. The Fund will maintain individual accounts for enrollees. The Fund is the not the property of the State and cannot be commingled with State funds. The Board also must establish effective risk management and oversight programs.	Pooled accounts established under the plan for investment; accounts will be professionally managed. Plan must maintain separate records and accounting for each plan account. May not guarantee any rate of return or interest rate on any contribution. The plan, the Board, each Board member and the State of Oregon may not be liable for any loss incurred by any person as a result of participating in the plan.	The Trust is established with contributions paid by employees and the Board shall delegate administration of the Trust to a third party. Assets of the Trust must remain in the Trust and cannot be transferred out. The Board may arrange for collective, common, and pooled investment of assets of the program, with a goal of saving costs through efficiencies and economies of scale. The Board will also explore and establish investment options that offer employees returns on contributions and the conversion of individual retirement savings account balances to secure retirement income without incurring debt or liabilities to the state. The Board must adopt an investment policy that includes a risk management and oversight program. The Program Fund may be privately insured and is not guaranteed by the state.	The Authority may contract with financial institutions or other organizations offering or servicing retirement programs. The State will not be liable for the payment of any benefit to any participant or beneficiary of any participant and shall not be liable for any liability or obligation of the Authority. Any employer who provides automatic enrollment shall be relieved of liability for investment decisions made by the employer or the Authority as long as employees are given open notice and ability to select investments as required by law. Liability relief also extends to any plan official who makes investment decisions on behalf of participating employees.	The moneys in the Program Fund may be invested by the Treasurer or may be invested in whole or in part under contract with the board of a California public retirement system, with private money managers, or in myRAs, or a combination as determined by the Board. The Board will use one or more investment management entities. The Trust's Program Fund is to be invested as determined by the Board as its Trustee which will arrange for the collective, common and pooled investment of assets. There must be a mechanism in place to hold the state harmless against any liability. The state shall not have any liability for the payment of retirement savings benefits earned by program participants. The Board must establish effective risk management and oversight programs.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Fees	Total expenses cannot exceed .75% of the total trust balance.	Must keep administrative fees low.	Administrative expenses may not exceed 0.5% of assets under management in the program.	Not specified, but the Authority shall minimize total annual fees, and after the completion of the fourth calendar year following the date that the program becomes effective, the total annual fees associated with the program shall not exceed three-quarters of one percent (.75%) of the total value of the program assets. Fees are defined as investment management charges, administrative charges, investment advice charges, trading fees, marketing and sales fees, revenue sharing, broker fees and other costs necessary to administer the program.	On or after six years from the date the program is implemented, on an annual basis, expenditures from the Administrative Fund shall not exceed more than 1% of the total Program Fund.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Program Funding	The Illinois Secure Choice Administrative Fund is created as a non-appropriated separate and apart trust fund in the State Treasury. The Administrative Fund is to be used by the Board to pay for administrative expenses it incurs. The Administrative Fund may receive any grants or other moneys designated for administrative purposes from the State, or any unit of federal or local government, or any other person, firm, partnership, or corporation. The Illinois General Assembly appropriated $2.1 million for fiscal year 2017 to assist with start-up costs. These funds will need to be paid back when the program becomes operational.	The Oregon Retirement Administrative Savings Plan Fund must be self-sustaining and is established from funds to be continuously appropriated to the Board. It is separate and distinct from the General Fund. The Plan Fund consists of moneys appropriated by the Legislative Assembly; moneys transferred from the federal government, other state agencies or local governments; moneys from payment of fees; any gifts or donations; and earnings on moneys in the fund. The Legislature appropriated $250,000, which may be used only for reimbursing other state agencies for providing outreach or technical assistance services; and $743,541, which may be used only for the operating expenses of the Board. The appropriation is a General Fund loan.	The Maryland Small Business Retirement Board, consistent with its fiduciary duties, may enter into an agreement to borrow funds from the state or any other entity to provide funding for the operation of the program until the program can generate sufficient funding for operations through fees assessed on program accounts. All expenses incurred to implement, maintain, and administer the Program and Trust will be paid from money collected by the Program or Trust.	The Connecticut Retirement Security Authority may borrow working capital funds and other funds as may be necessary for the start-up and continuing operation of the program, as long as such funds are borrowed in the name of the Authority only. Such borrowings shall be payable solely from revenues of the Authority.	The California Secure Choice Retirement Savings Trust is established as a self-sustaining trust. The Board shall segregate moneys received into two funds – the Program Fund and the Administrative Fund. Moneys from the Program Fund are transferred to the Administrative Fund to cover the operating costs of the program. The State can accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of the federal, state or local government or any other person, firm, partnership or corporation for deposit to the Program or Administrative Fund. The Budget Act of 2016 appropriates up to $1.9 million from the General Fund as a loan to support the administrative costs of the program. The loan shall be repaid by June 30, 2022, with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Program Administration	The Board shall make and enter into contracts necessary for the administration of the program and Fund, including, but not limited to, retaining and contracting with investment managers, private financial institutions, other financial and service providers, third-party administrators, and other professionals as necessary. The Board shall determine the number and duties of staff members needed to administer the program including assembling and employing staff as needed, appointing a program administrator, and entering into contracts with the Treasurer to make employees of the Treasurer's office available to administer the program.	The Board shall make and enter into contracts, agreements or arrangements, and to retain, employ and contract for following: services including those of private and public financial institutions, depositories, consultants, investment advisers, investment administrators and third-party plans; research, technical and other services; services to other state agencies to assist the Board; to evaluate the need for and procure pooled private insurance of the plan.	The Board may hire consultants, administrators, and other professionals as necessary to help implement, maintain, and administer the Program and the Trust. The Board shall appoint a program administrator and determine the duties of the program administrator; employ staff as necessary and set the compensation of the staff; procure insurance against any loss of the Trust; and adopt regulations to ensure that the program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.	The Board may contract with financial institutions or other organizations offering or servicing retirement programs; make and enter into contracts or agreements with professional service providers, including, but not limited to, financial consultants and lawyers, as may be necessary. The Board may appoint an executive director and assistant executive director, who shall not be members of the Board and who shall serve at the pleasure of the Board. The Board shall adopt written procedures for making modifications to the program to be consistent with federal rules and regulations in order to ensure that the program meets all criteria for federal tax-deferral or tax-exempt benefits.	The Treasurer shall, on behalf of the Board, appoint an executive director, who shall not be a member of the Board and who shall serve at the pleasure of the Board. The Treasurer shall determine the duties of the executive director and other staff as appropriate and set his or her compensation. The Board may authorize the executive director to enter into contracts on behalf of the Board or conduct any business necessary for the efficient operation of the Board. The Board has the authority to employ staff and make and enter into contracts necessary for the administration of the Trust; to contract with and determine the duties of the program administrator; to collaborate with, and evaluate the role of, licensed insurance agents and financial advisors in assisting and providing guidance for eligible

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Program Administration (continued)	The Board shall evaluate the need for, and procure as needed, insurance against any and all loss in connection with the program; facilitate compliance by the program with all applicable requirements for the program under the Internal Revenue Code, including tax qualification requirements or any other applicable law and accounting requirements.				employees; to procure insurance against any loss of the Trust; to set minimum and maximum investment levels in accordance with contribution limits set for IRAs by the Internal Revenue Code; to facilitate compliance by the arrangements under the program with all applicable requirements for the program under the Internal Revenue Code of 1986; and to adopt regulations to ensure that the program meets all criteria for federal tax-deferral or tax-exempt benefits, or both.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Marketing & Outreach	The Board shall facilitate education and outreach to employers and employees.	The Board shall have the power to develop and implement an outreach plan to gain input and disseminate information regarding the plan and retirement savings in general. The Board may collaborate with state agencies as necessary to provide outreach services for the plan.	Not specified.	The Board shall distribute information as the Board may deem necessary or advisable to provide to participants, potential participants and qualified employers in the state.	The Board shall collaborate and cooperate with the board of a California public retirement system, private financial institutions, service providers, and business, financial, trade, membership, and other organizations to the extent necessary or desirable for effective and efficient design, implementation, and administration of the program and to maximize outreach to eligible employers and eligible employees. The Board shall also include comprehensive worker education and outreach in the program, and may collaborate with state and local government agencies, community-based and nonprofit organizations, foundations, vendors, and other entities deemed appropriate to develop and secure ongoing resources for education and outreach that reflect the cultures

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Marketing & Outreach (continued)					and languages of the state's diverse workforce population. The Board shall include comprehensive employer education and outreach in the program, with an emphasis on employers with fewer than 100 employees, developed in consultation with employer representatives, with the integration of a program Internet Web site to assist the employers of participating employees.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Establish Website	Yes. The Board shall establish and maintain an Internet website designed to assist employers in identifying private sector providers of retirement arrangements that can be set up by the employer rather than allowing employee participation in the program under this Act, if there is sufficient interest in a site by private sector providers and if the private sector provides the funds necessary to build and maintain the site.	Not Specified	Not Specified	Yes. The Authority shall establish and maintain a secure Internet website to provide Exchange participants with information regarding approved vendors that offer individual retirement accounts through the program and the various investment options, including the historical investment performance of such options that may be available for such individual retirement accounts.	Yes. The creation of a Retirement Investments Clearinghouse, but only if there is sufficient interest in a site by private sector providers and if the private sector provides the funds to build and maintain the site. The website would contain information on the vendor registration process, retirement plans, and statements from participating vendors. Vendors must offer an appropriate array of accumulation funding options, including, but not limited to, investment options that offer guaranteed returns and the conversion of retirement savings account balances to secure retirement income, a diversified mix of value, growth, growth and income, hybrid and index funds or accounts across large, medium and small capitalization asset classes.

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Implementation Timeline	Enrollment of participants must be possible within 24 months after the effective date of the Act (by June 1, 2017). Employers then have 9 months after that date to set up their automatic payroll deposits for their employees. If the Board does not have adequate funds to implement the program within the specified timeframe, the Board may delay implementation. The Board intends to use a phased enrollment approach, beginning with a pilot program. It will seek legislative authority to change the rollout date from June 2017 to 2018.	By December 31, 2016, the Board must provide a report to the Legislative Assembly including, but not limited to, the market analysis, ways to increase financial literacy, analysis of cost to employers, and a timeline for program implementation so individuals may begin making contributions no later than July 1, 2017.	The Act will take effect July 1, 2016.	Not later than January 1, 2018, qualified employers need to provide covered employees with the informational materials prepared by the Authority. Not later than 60 days after a qualified employer provides informational materials to a covered employee, such qualified employer shall automatically enroll each of its covered employees in the program. The Authority may defer the effective date of the program, in whole or in part, as deemed necessary.	The California Secure Choice Retirement Savings Program is approved by the Legislature and effective as of January 1, 2017. - Within 12 months after the Board opens the program for enrollment, eligible employers with more than 100 eligible employees shall allow employee participation. - Within 24 months eligible employers with more than 50 eligible employees shall allow employee participation. - Within 36 months all other eligible employers shall allow employee participation. Prior to opening the program for enrollment, the Board shall report to the Governor and Legislature: - The specific date on which the program will start to enroll participants. - The program is structured to meet the criteria of the DOL's safe harbor. - The payroll deduction IRA arrangements offered by

	Illinois Secure Choice Savings Program	Oregon Retirement Savings Plan	Maryland Small Business Retirement Savings Program and Trust	Connecticut Retirement Security Exchange	California Secure Choice Retirement Savings Program
Implementation Timeline (continued)					the program qualify for favorable federal income tax treatment under the Internal Revenue Code. - The Board has adopted a third-party administrator operational model that limits employer interaction and transactions with the employee to the extent feasible.

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The Georgetown Center for Retirement Initiatives Report: Comparison of Retirement Plan Design Features, By State: Massachusetts, Washington, and New Jersey

GEORGETOWN UNIVERSITY
McCourt School of Public Policy
Center for Retirement Initiatives

Comparison of Retirement Plan Design Features[1], By State:
Massachusetts, Washington and New Jersey

State Brief 16-02

November 30, 2016
UPDATE

[1] 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-sponsored retirement savings programs that would include ERISA-covered retirement plans. These options include a marketplace, prototype plans, and state-sponsored "open" multiple employer plans (MEPs). The state plans in this document are plans covered by the Interpretive Bulletin.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Bill Sponsor	Rep. Garrett Bradley	Sen. Mark Mullet and Sen. Don Benton	Rep. Vincent Prieto
Bill Number	Chapter 60 (2012)	ESSB 5826 (2015)	Chapter 298 (2016)
Bill Status	Enacted March 22, 2012	Enacted May 18, 2015	Enacted January 19, 2016
ERISA Applicability	Yes	ERISA cannot apply to the state for operating the marketplace, but ERISA plans are allowed in the marketplace and normal ERISA requirements would apply to participating employers.	ERISA cannot apply to the state for operating the marketplace, but ERISA plans are allowed in the marketplace and normal ERISA requirements would apply to participating employers.
Market, Feasibility and/or Legal Analysis Required	No	No	No
Administrative Entity	Agency - Office of the State Treasurer. There shall be in the Office of the State Treasurer a not-for-profit defined contribution committee. The committee shall consist of the Treasurer or a designee, who shall serve as chairperson, and additional members appointed by the Treasurer, two of whom shall have practical experience in the non-profit community and two of whom shall be currently employed by not-for profit corporations.	Agency - State Department of Commerce. The Director shall consult with the Washington State Department of Retirement Systems, the Washington State Investment Board, the Office of the Insurance Commissioner and the Department of Financial Institutions in designing and managing the marketplace. Prior to approving a plan to be offered on the marketplace, the Department of Commerce must receive verification from the Department of Financial Institutions and Office of the Insurance Commissioner that the financial services firm offering the plan meets requirements set forth in statute and that the plan meets the requirements set forth in statute.	Agency - The State Treasurer, or the Treasurer's designee, shall consult with the Director of Investment of the Department of the Treasury, or the Director's designee; the Commissioner of Banking and Insurance, or the Commissioner's designee; the Commissioner of Labor and Workforce Development, or the Commissioner's designee; the Chairperson of the State Investment Council, or the Chairperson's designee; the Director of the Division of Pensions and Benefits, or the Director's designee; and the Chief Executive Officer (CEO) of the New Jersey Economic Development Authority, or the CEO's designee, in designing and managing the marketplace.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Employer Participation	Voluntary	Voluntary	Voluntary
Employers Affected	Non-profits only with 20 or fewer employees	Fewer than 100 employees	Fewer than 100 employees
Penalties for Employer Non-Compliance	Not Applicable	Not Applicable	Not Applicable
Structure of Accounts	Defined contribution 401(k) plan	SIMPLE IRA; myRA (Roth IRA); payroll deduction IRA and ERISA plans can be added. May also offer "life insurance plans designed for retirement purposes."	SIMPLE IRA; myRA (Roth IRA); payroll deduction IRA and others can be added. Shall also offer "life insurance plans designed for retirement purposes."
Automatic Enrollment	Permissible	Business owners may auto enroll as IRS rules allow - no state requirement.	Business owners may auto enroll as IRS rules allow - no state requirement.
Employee Opt-Out	Voluntary employee participation.	Voluntary employee participation.	Voluntary employee participation.
Employee Re-Enrollment after Opt-Out	Not Specified	Not Applicable	Not Applicable
Default Contribution Rate	6% or can choose 4% with auto-escalation up to 10%	Not Specified	Not Specified
Employer Contribution	Permitted	Permitted if an ERISA plan option.	Permitted if an ERISA plan option.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Availability to Other Employers	No	Yes. The self-employed and sole proprietors are eligible to participate in the marketplace.	Yes. The self-employed and sole proprietors are eligible to participate in the marketplace.
Tax & Other Incentives	Not Specified	Yes. The Director shall contract with a private sector entity to identify and promote existing federal or state tax credits and other benefits to encourage retirement savings or participation in retirement plans. Using funds specifically appropriated for this purpose, and funds provided by private foundations or other private sector entities, the Director may provide incentive payments to participating employers that enroll in the marketplace.	Yes. The State Treasurer or designee shall contract with private sector entities to identify and promote existing federal and state tax credits and benefits to encourage retirement savings or participation in retirement plans. The State Treasurer, or designee, shall approve incentive payments to participating employers that enroll in the marketplace if there are sufficient funds provided by private foundations or other private sector entities, or with State funds specifically appropriated for this purpose.
Investment of Assets	13 custom target date funds; 4 objective base funds: growth fund; income fund; capital preservation fund; and an inflation protection fund.	Firms participating must offer a minimum of two product options: a target date fund or other similar fund and a balanced fund.	Firms participating in the marketplace shall offer a minimum of two product options, including a target date or other similar fund and a balanced fund.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Investment Management	The Treasurer may contract with practitioners, administrators, investment managers and other entities, including the pension reserves investment management board, in order to design, administer and provide investment options under the plan. The plan provides for a qualified trust, with contributions made to the trust by the not-for-profit employer, the employer's employees, or both.	Not Specified	Not Specified
Fees	Custom Target Date Funds: 22-86 bps Growth: 60 bps Income: 40 bps Capital Preservation: 40 bps Inflation Protected: 86 bps	No more than 1% in total annual fees to investors; participating employers may not be charged an administrative fee.	No more than 1% in total annual fees to investors; participating employers may not be charged an administrative fee.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Program Funding	Under the trust instrument, any part of the corpus or income shall not be used for, or diverted to, purposes other than the exclusive benefit of employees or their beneficiaries at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries.	The Legislature appropriated $524,000 for the Department of Commerce for the two year budget cycle beginning July 1, 2015. In addition to any appropriated funds, the Director may use private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the Department shall seek federal and private grants and is authorized to accept any funds awarded to the department for use in the marketplace.	In addition to any funds appropriated for the purposes of this act, the State Treasurer, or the Treasurer's designee, shall approve the use of private funding sources, including private foundation grants, to pay for marketplace expenses. On behalf of the marketplace, the Department of Treasury shall seek federal and private grants and is authorized to accept any funds awarded to the State Treasurer, or the Treasurer's designee, for use in designing, implementing, and operating the marketplace. The State Treasurer, or designee, may establish a fee system that charges participating marketplace firms in order to cover the startup and annual administrative expenses.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Program Administration	In order to participate in the plan, a not-for-profit employer shall execute a participation agreement, agree to the terms of the plan and operate the plan in compliance with the Internal Revenue Code and ERISA. The Treasurer may require the not-for-profit employer sign a service agreement and use forms and procedures prescribed by the Treasurer. The Treasurer may also require that certain employers seek approval of their plans from the IRS.	The Director will contract with a private entity to establish protocols for reviewing financial services firms interested in selling products and operating the marketplace website. The Director shall adopt rules necessary to allow the marketplace to operate as authorized by this legislation. As part of the rule development process, the Director shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, organizations representing private sector financial services firms, and any other individuals or entities that the Director determines relevant to the development of an effective and efficient method for operating the marketplace.	The State Treasurer, or designee, shall contract with one or more private sector entities to establish a protocol of reviewing and approving the qualifications of all financial services firms that meet the requirement to participate in the marketplace. The State Treasurer, or designee, shall consult with organizations representing eligible employers, qualified employees, private and nonprofit sector retirement plan administrators and providers, private sector financial services firms, and any other individuals or entities that the State Treasurer, or designee, determines relevant to the effective and efficient method of effectuating the purposes of this act.
Marketing & Outreach	Not Specified	The Director may contract with a private sector entity to develop marketing materials about the marketplace that can be distributed electronically or posted on public sector maintained websites and promote the benefits of retirement savings and other information that promotes financial literacy.	The State Treasurer, or designee, shall contract with one or more private sector entities to develop marketing materials about the marketplace that can be distributed electronically or posted on both public and private sector maintained websites and promote the benefits of retirement savings and other information that promotes financial literacy.

	Massachusetts Retirement Plan for Non-Profits ("Prototype Plan")	Washington Small Business Retirement Marketplace	New Jersey Small Business Retirement Marketplace
Establish Website	Yes. Retirement Income Control Panel – web-based tool to allow participants to view hypothetical projections of retirement income based on assumptions on account balances, savings and rate of return.	Yes. The website would include information on how eligible employers can voluntarily participate in the marketplace.	Yes. The website would include information on how eligible employers can voluntarily participate in the marketplace.
Implementation Timeline	Not Specified	Rules to implement the program must be presented by January 1st of the year to be adopted and cannot be adopted until the end of the legislative session that year.	Not Specified

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Appendix J – The Pew Charitable Trusts Report: How States are Working to Address the Retirement Savings Challenge

A report from THE PEW CHARITABLE TRUSTS | June 2016

How States Are Working to Address The Retirement Savings Challenge

An analysis of state-sponsored initiatives to help private sector workers save

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Cover photo:
1. ByeByeTokyo/iStockphoto

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Overview

Most Americans are not saving enough to pay for their retirement years. A majority of workers do not have a retirement savings plan through their employer, and less than 10 percent of all workers contribute to a plan outside of work.[1]

Not surprisingly, lower-income families are least likely to be saving. According to the U.S. Bureau of Labor Statistics, only 40 percent of private sector workers with wages in the lowest quarter of earners have access to retirement programs through their employers or unions.[2]

The failure to save enough—or save at all—has an impact on Americans in their working years and later in life. With life expectancy on the rise, workers' efforts to prepare for retirement face threats from inadequate investment returns, large or unexpected expenses, and inflation. These risks affect all Americans, but those who have saved for retirement have a real advantage.

Government can play a role in helping Americans save for retirement. Policy tools range from offering incentives, such as tax breaks for contributions or for setting up a plan, to providing consumer protections for retirement plan participants. Congress and the Obama administration have proposed approaches to increase retirement savings, but no major federal legislation has passed on this issue since 2006.[3] That inaction has led state policymakers to look for opportunities to fill the gap.

Since early 2012, over half of the states have introduced legislation to set up or study options for state-sponsored retirement savings programs for workers at private sector or nonprofit employers that do not offer plans.[4] Illinois, Massachusetts, Oregon, New Jersey, and Washington have enacted state programs.

To help state policymakers craft effective policies, The Pew Charitable Trusts analyzed efforts in progress or under legislative consideration in 25 states. The states' objectives are consistent: increase retirement savings and reduce poverty among retirees so they can support themselves without social assistance—spending that puts a strain on state budgets. Lawmakers also want to ensure that reforms are implemented successfully, impose minimal burdens on employers, build cost-effective and sustainable programs, and protect employee retirement savings.

These goals provide a framework for examination of the various state approaches. Lawmakers must explore how to maximize program effectiveness, minimize administrative and financial costs for employers, and manage their states' legal and financial risks. These priorities can conflict and require consideration of difficult trade-offs, making the task of crafting proposals tougher. For example:

- The vast majority of workers would participate in a workplace retirement savings plan if given a chance. As a result, many state proposals require that employers of a certain size enroll all workers, though these employees can opt out. But small-business owners express concerns that mandating automatic enrollment could be an administrative burden, which could reduce the appeal of these proposals.
- States must carefully consider where to set the initial percentage of employee pay that will go into the accounts—known as the default contribution rate—because workers typically do not opt out of automatic enrollment or adjust this default rate once they are enrolled. Too low a rate could encourage employee participation but result in little savings, forcing the state to administer a large number of small account balances. Too high a rate could lead to higher balances but could also cause some workers to avoid taking part altogether.

- States must define employers' role in communicating plan specifics. Many proposed laws seek to limit businesses' responsibilities for implementation; however, unless a state makes a major effort to inform workers and employers about details in such cases, some targeted workers may opt out. Employers may have to engage in ongoing communications with workers about the program—and bear the economic and lost-time costs—if the state does not perform these outreach functions effectively.
- States face challenges in generating and protecting workers' savings over the long run. Low-risk investments make losses less likely but also increase the chances that accounts won't grow enough to meet retirees' needs. Some states have looked at ways to guarantee certain rates of return, but that approach also brings possible risks and costs to the state.

Pew's analysis identifies three approaches to increase retirement savings for private sector workers that states are considering. Under the first option, policymakers must decide whether the program will be set up under the federal Employee Retirement Income Security Act of 1974 (ERISA), the law that regulates pensions and sets a number of minimum standards. ERISA provides consumer protections for plan enrollees but can impose costly regulatory requirements on employers and increase a state's administrative burden.

Under the second option, states can craft plans that do not fall under ERISA, such as the Secure Choice program in Illinois, which allows all workers in the state who do not have plans through their employers to make payroll contributions to individual retirement account plans. With the third option, states can help businesses voluntarily set up their own retirement savings plans, as is being done with the marketplace websites created for small employers by Washington and New Jersey.

> Pew's analysis identifies three approaches to increase retirement savings for private sector workers that states are considering.

This report also looks at the specific choices facing policymakers, including the range of approaches to regulating:

- Requirements for employers' participation, responsibilities, and liabilities.
- Rules for employees' enrollment, contributions, and withdrawals.
- How contributions will be invested and savings will be protected.
- How the programs will be governed and administered, including the likely costs and the potential state liabilities.

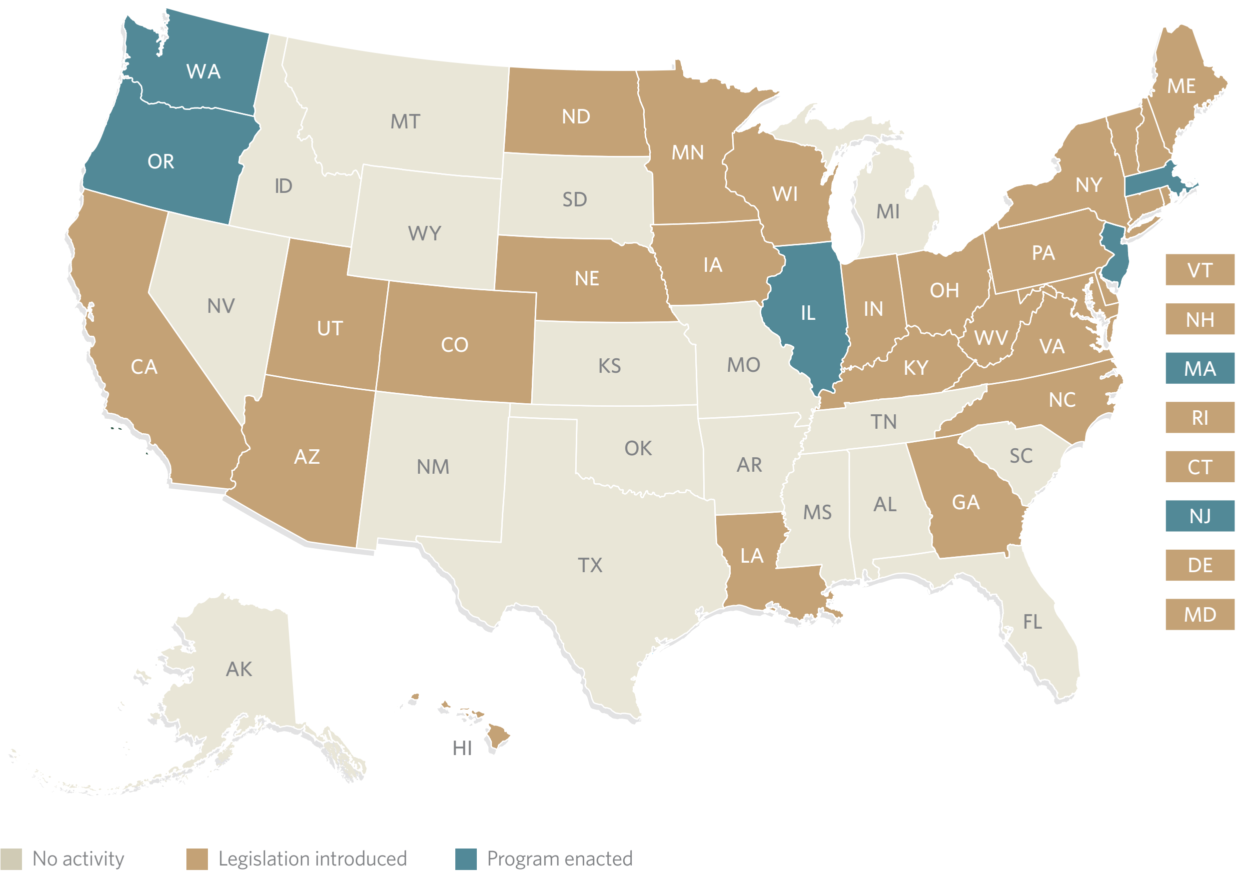
States must determine whether they have the administrative and financial capacity to manage large savings programs. Many already have experience running retirement plans for public employees, health exchanges under the Affordable Care Act, and 529 college savings plans. But creating viable state-run retirement programs for private sector workers can present different challenges in achieving both scale and efficiencies if they must manage many small account balances funded by the payroll systems of many small employers. States can learn from the experiences of one another as they consider the best paths forward.

States would be well served to make policy choices that balance competing objectives and take into consideration the specific economic and demographic characteristics of the workers who could participate in these plans. If states weigh these factors carefully, they can make a meaningful improvement in the retirement security of many working Americans while minimizing costs to taxpayers.

Figure 1

Many States Look to Boost Retirement Savings Among Private Sector Workers

Bills introduced in more than half of states since 2012



Source: Pew analysis of state legislation filed between 2012 and April 2016

The retirement savings challenge

Americans depend on three primary sources for income in old age: Social Security, individual savings or earnings, and workplace retirement plans. The state proposals studied in this report are meant to fill gaps in the employer-provided system.

Retirement plans come in two basic types: defined benefit plans, which include traditional pensions and cash balance plans, and defined contribution plans such as 401(k) plans and individual retirement accounts (IRAs). Most retirement savings occurs in the workplace through an employer-sponsored plan rather than an IRA.[5] These plans often benefit from tax incentives for employers and employees, but they also take advantage of payroll systems to make saving easier. For example, workers can make smaller, regular contributions rather than waiting until the end of the year, when they may not remember or be able to make a personal IRA contribution. That helps make saving a habit.[6]

Defined benefit plans use a formula that usually provides a guaranteed lifetime benefit at a specified retirement age; these benefits typically are funded by employers. In defined contribution plans, benefits build over time with employee and often employer contributions. Long-term returns on investments are critical. These plans do not promise a specific benefit at retirement and are defined more by the accumulation of contributions over time.

Neither type of plan is risk-free. With a defined benefit plan, inflation can eat into the annuity if cost-of-living allowances are not included or if the company funding it fails or suspends the plan before a worker accumulates sufficient benefits.[7]

Defined contribution plans face their own risks, including the following:[8]

- Will workers outlive their retirement savings? Will the savings be enough to pay expenses for the rest of their lives? Will investment returns be high enough to reach an adequate level of assets? To what extent should workers be protected from investment volatility, high fees, and their own mistakes?
- Will sudden and unforeseen expenses, such as high medical costs, drain retirement funds too quickly?
- Will inflation erode the purchasing power of retirement funds, particularly if "safe" assets do not keep up with the cost of living?

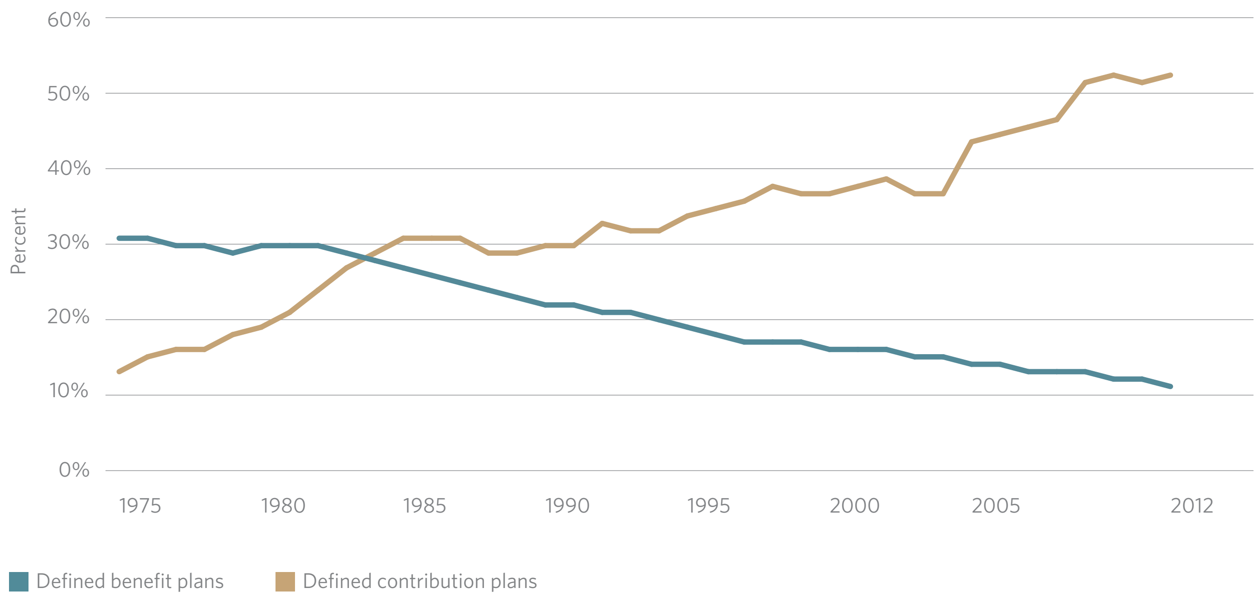
A critical factor in weighing the impact of these risks is who bears them. Workers shoulder all the market and longevity risks in a defined contribution plan, while the risks are shared by workers and employers in defined benefit plans.

Defined contribution plans have become the dominant savings approach in the private sector in recent decades. In 1980, nearly 150,000 defined benefit plans covered 30 million active workers (30 percent of the workforce). By 2012, those numbers had shrunk: 43,601 defined benefit plans covered 16 million active U.S. workers (11 percent of the workforce). Over the same period, the number of defined contribution plans increased from about 340,800 to a peak of 686,900 plans in 2000 before decreasing slightly to 633,000 in 2012. Defined contribution plans covered 19 million workers (19 percent of the workforce) in 1980, but that number jumped to more than 75 million (53 percent of the workforce) by 2012. Although the number of defined contribution plans decreased after 2000, the number of active participants in such plans continued to rise, from 51 million to 75 million in 2012.[9] Figure 2 shows these trends.

Figure 2

Defined Contribution Plans Now Much More Common Than Pensions

More than half of private sector workforce is in these types of plans



Source: U.S. Department of Labor Employee Benefits Security Administration, December 2014, Form 5500 data

Overall, the growth of defined contribution plans has offset the decline of defined benefit plans in terms of the total number of Americans covered.[10] But having access to a plan is not the whole story, particularly given the differences between the benefits offered by each type. For example, a recent report by the Center for Retirement Research found that total retirement wealth, which includes defined benefit accruals, defined contribution savings, and asset returns, has been relatively steady over time, despite the transition from traditional pensions to defined contribution plans. But employees in defined contribution plans bear all the investment risks.[11] And because people are living considerably longer in retirement than they once did, the aggregate savings rate would have to increase to meet the greater expected need.

Key Terms: Access, Participation, and Coverage

Retirement policy often focuses on three major issues regarding workplace retirement plans: access, participation, and coverage. To provide access, an employer must offer a plan to workers, and workers must be eligible to participate under the terms of the plan. Participation refers to employees actually taking part in the plan, which typically requires making contributions. Depending on the employer, workers could make an active choice by signing up for a plan, or they could be enrolled automatically when they are hired, with the choice to opt out. Coverage refers to the number or proportion of workers covered by retirement plans and is a function of access and participation.

Although studies have reached different conclusions, many factors indicate that income will be inadequate for retired Americans in general.[12] For example:

- A 2015 study from the Employee Benefit Research Institute estimated that the current American workforce will face an aggregate retirement savings shortfall of $4.13 trillion.[13]
- A 2012 study by the Urban Institute estimated that 30 to 40 percent of baby boomers (those born from 1946 through 1964) will not have enough income at age 70 to replace 75 percent of their pre-retirement earnings, a common standard for judging income adequacy in retirement.[14]
- The Center for Retirement Research's National Retirement Risk Index provides a measure of the percentage of working-age American households at risk of being financially unprepared for retirement. The index indicates that the proportion of households facing a decline in their standard of living in retirement increased from 30 percent in 1989 to 52 percent in 2013.[15]
- Studies show that economic insecurity among older Americans of color is much higher than among white older Americans.[16]

Although there is no single accepted standard for assessing retirement savings readiness, many financial advisers say that retirees should be able to live off 4 percent of their assets per year or that they should accumulate an amount equal to 10 times their desired yearly income.[17] For most workers, that is a formidable task.

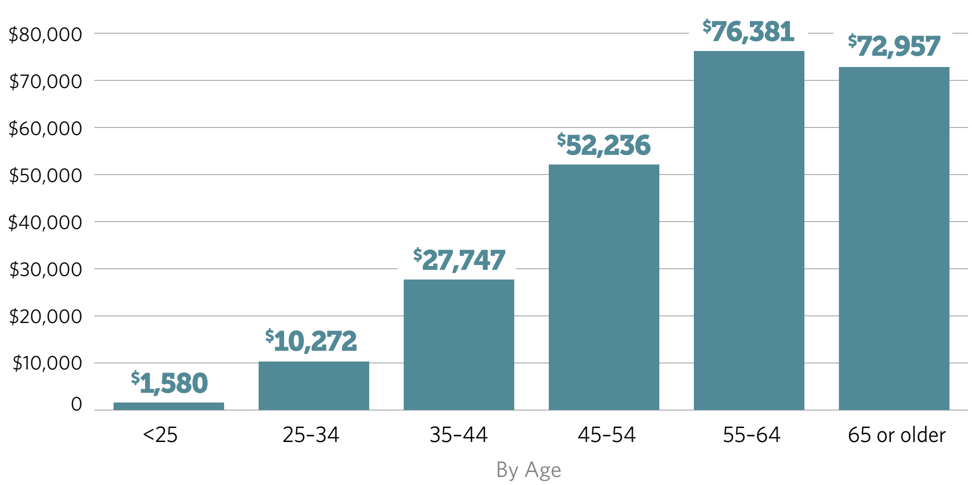
Figure 3 shows that the median defined contribution retirement account balance for those ages 55 to 64 is about $76,000.[18] Median household income for that age group is $56,575. The numbers suggest troublesome retirement prospects for many older Americans.

Most of the defined contribution savings come from 401(k) plans, which use pretax deductions from paychecks to accumulate savings tax-free until the money is withdrawn. The average balance in 401(k) plans in 2013 for all ages was $72,383, while the median balance was $18,433.[19]

Figure 3

Many Older Workers Have Limited Funds in Retirement Accounts

Median retirement savings account balances by age



Source: Vanguard, *How America Saves 2014*

In addition to these low levels of savings, many older Americans are entering retirement with higher amounts of debt. Pew's research has found that among retirees born between 1928 and 1945, the so-called silent generation, more than half (56 percent) have debt, and 80 percent of baby boomers, many now entering retirement, have debt.[20] Perhaps it is not surprising that half of elderly people who are single and one-third of elderly people in relationships die with less than $10,000 in assets.[21] Analysts debate whether retirement prospects are as bad as these factors indicate,[22] but the weight of the evidence points to significant problems for many Americans.

> The average balance in 401(k) plans in 2013 for all ages was $72,383, while the median balance was $18,433.

State policymaker objectives

Pew analyzed all state legislation on retirement savings introduced from 2012 through 2015. The proposals to promote retirement savings for private sector employees generally share certain goals. Supporters want the state-sponsored programs for these employees to increase access to retirement savings opportunities for workers whose employers do not offer retirement plans. In addition, many proposals would bolster participation among workers who are unlikely to save enough on their own to ensure a financially secure retirement.[23] For example, the Connecticut legislation that launched a study of retirement savings options states that a goal of the program would be to achieve an "increase in access to and enrollment in quality retirement plans."

Sponsors of legislation also seek to reduce poverty among retirees so that they can support themselves without needing public assistance—spending that strains government budgets. The California Secure Choice statute, enacted in 2012, says that the "lack of sufficient retirement savings poses a significant threat to the state's already strained social safety net programs and also threatens to undermine California's fiscal stability and ongoing economic recovery."[24]

Reforms also must be feasible and work in practice, so states should focus on operational details to ensure that the programs accomplish legislative objectives. That is particularly true for key elements of program design, such as ensuring that the processes for enrolling employees and transferring contributions are workable. State-sponsored programs also must be cost-effective and self-sustaining.[25]

In addition to limiting state legal liability, some laws have made clear that the state is not liable for any contracts or commitments made by the program,[26] for the performance of investments, or for paying benefits to participants.[27] For example, the Illinois Secure Choice legislation says that the state will provide investment options that generate returns on contributions and convert account balances to secure retirement "without incurring debt or liabilities to the State."[28]

Finally, under some proposals, the state program would provide certain protections for workers and their assets. For example, Connecticut's study legislation suggested setting a predetermined and guaranteed rate of return on assets, as well as an annuitized benefit, but the study commission did not recommend such a guarantee.[29] Several states also say their programs should "ensure the portability of benefits."[30]

Three approaches

States generally have taken one of three approaches to bolstering retirement savings by private sector workers. Each approach reflects a major structural choice for policymakers. A state can sponsor and administer a plan within the structure of ERISA, the federal law that governs pensions; it can work within the current voluntary employer-based system without sponsoring a state plan; or it can create a state-based plan that may not be subject to the federal pension law.

Option 1: State-sponsored ERISA plan

Legislators designing a state retirement program for private sector employees need to decide whether it will be governed by ERISA. (See Appendix for more on ERISA.) In general, ERISA provides important protections for those who participate in private sector plans and their beneficiaries, but it also imposes regulatory requirements and responsibilities on employers. These include reporting and disclosure rules as well as fiduciary responsibilities that require plan sponsors and providers who have control over plan assets to act in the best interests of plan participants. ERISA also sets limitations on the amount of benefits that owners or highly compensated employees can receive from the plan.

Plans for public sector employees are exempt from ERISA. IRAs typically are not subject to ERISA when they are set up, funded, and controlled by an individual and not the employer. But a state law that requires participating employers to set up an employee retirement plan might be subject to or pre-empted by ERISA, depending on how courts interpret the plan design, although states may be able to provide incentives for employer and employee contributions.

Prototype and multiple employer plans

Recent guidance from the U.S. Department of Labor made clear that states can operate ERISA-governed plans that cover many private sector employers.[31] These can be either prototype plans or multiple employer plans (MEPs). With a prototype plan, a state would offer a standard plan design for a 401(k) or other retirement plan to employers, which would choose among options, such as contribution rates, according to their needs.

Each employer that adopts the prototype is sponsoring an ERISA plan. Individual employers would assume the same fiduciary obligations associated with sponsorship of any ERISA-covered plan, but a state or a designated third party would assume responsibility for most administrative and asset management functions.

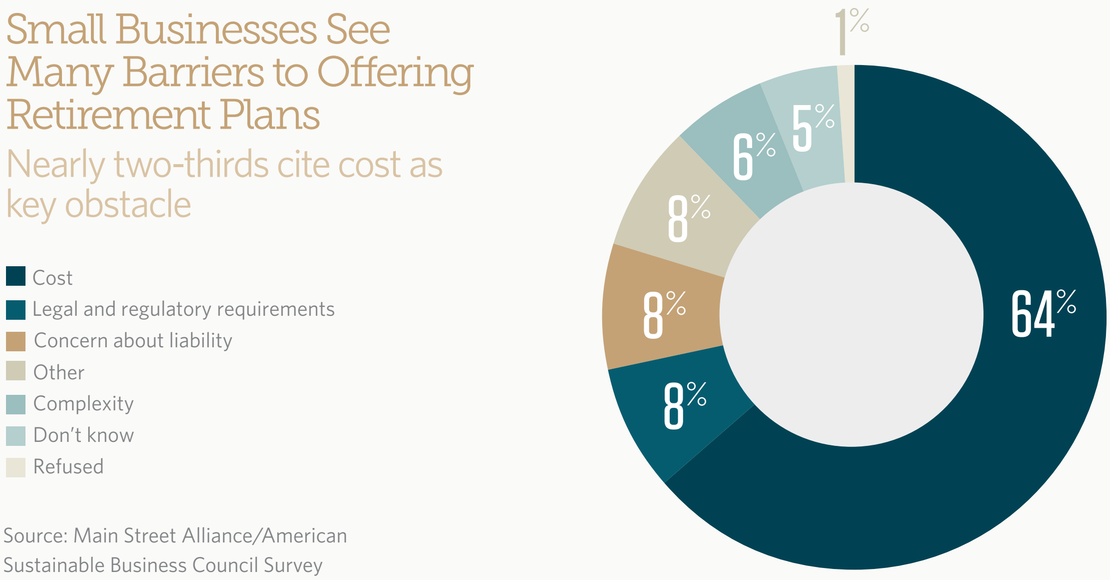
As a single plan that covers a group of unrelated employers, a MEP also falls under ERISA. A state that sponsors a MEP would be the plan fiduciary in terms of operating the plan, communicating with employees, selecting service providers, paying benefits, and performing other plan services.[32]

Prototype plans and MEPs can both achieve efficiencies and economies of scale that help reduce costs. Employers that do not offer retirement savings plans to their employees often cite concerns about costs, legal and regulatory requirements, and liability issues. In a 2013 survey of small businesses with and without retirement plans conducted by the Main Street Alliance/American Sustainable Business Council, 64 percent cited cost as the largest barrier to offering a retirement savings plan. (Figure 4 provides the range of responses.)[33] Another survey, conducted in 2014 by the Small Business Majority in Illinois, found that of the 70 percent of small businesses that do not offer plans, 27 percent cited a lack of administrative capacity and 14 percent cited cost as reasons for doing so.[34]

Figure 4

Small Businesses See Many Barriers to Offering Retirement Plans

Nearly two-thirds cite cost as key obstacle



Source: Main Street Alliance/American Sustainable Business Council Survey

MEPs can benefit employers and employees because they combine contributions from many workplaces and investment returns in a single asset pool, although participants have individual accounts. While ERISA applies to MEPs, only one ERISA-required annual report must be filed for the whole plan, instead of multiple reports on behalf of each participating employer. In addition, the fiduciary duty is greatly reduced for employers.[35] As part of its effort to facilitate state consideration of MEPs, the Department of Labor has advised that state-sponsored MEPs can be exempted from some of the requirements that apply to similar private sector multi-employer plans.[36]

Prototype Example: Massachusetts CORE

The Massachusetts Connecting Organizations to Retirement (CORE) program was designed to be a voluntary defined contribution program for small nonprofit organizations. In 2012, Massachusetts enacted legislation that authorized creation of a voluntary qualified retirement plan that could be used by nonprofit organizations with a maximum of 20 workers.[37] Each participating employer maintains an ERISA-covered defined contribution plan that is made more affordable because the state treasurer administers contributions and investments.[38] Employers that participate must operate their plans in compliance with the Internal Revenue Code and ERISA. The state treasurer can contract with individuals or companies to help design, administer, and provide investment options. The legislation also created a "not-for-profit defined contribution committee" to help the treasurer develop general program policy and to provide technical advice.[39]

Option 2: Non-ERISA state plan

Some legislators fear that ERISA would require the state, the plan, or participating employers to take on too many responsibilities or be subjected to unwanted liability. Many employers that do not offer retirement plans find it too expensive to do so under ERISA or find ERISA to be overly burdensome.

Most legislation on state-sponsored retirement plans for the private sector is being designed to avoid ERISA. For a state plan to avoid falling under ERISA, the employer's role must be minimal. The federal Department of Labor provides legal guidance to employers describing the specific arrangements needed to keep a plan from falling under ERISA as well as the tasks an employer can perform without converting the arrangement to an ERISA-covered plan.[40]

For example, the Labor Department has long provided a safe harbor in which an IRA program funded by payroll deductions is not an ERISA plan if the following conditions are met:

- The employer does not make any contributions.
- Employee participation is "completely voluntary."
- Employer involvement is minimal and limited to providing information about the program to employees without endorsing the program.
- The employer is not paid for offering the program.[41]

In response to a directive from President Barack Obama, the Labor Department proposed modifying this safe harbor somewhat when an employer is participating in a state-sponsored IRA plan.[42] To create a state-sponsored retirement program with automatic enrollment that is not subject to ERISA, state legislators must make sure that employer responsibilities fall within the original Labor Department safe harbor[43] or the newly proposed safe harbor for state-sponsored IRA plans.[44]

Example: Illinois Secure Choice

In January 2015, Illinois enacted the Illinois Secure Choice Saving Programs Act.[45] The program will use automatic enrollment and payroll deduction contributions to fund Roth IRAs[46] and is slated to be implemented by June 1, 2017.[47]

Illinois has made clear it will have no liability for payment of retirement savings benefits, and the program is required to become self-sufficient. The law says that members of the Illinois Secure Choice Board and those they hire have the fiduciary duty to act solely in the interest of plan participants and beneficiaries.[48] They face no liability for losses from investments selected, unless the liability arises out of a breach of fiduciary duty.[49]

Once the law is implemented, businesses and nonprofit employers in operation for at least two years with at least 25 qualified employees and no retirement plans will be required

Continued on next page

to participate.[50] The Illinois legislation would let other small employers that do not offer a retirement plan participate voluntarily, but the Labor Department's proposed rule would prohibit voluntary employer participation in order to keep employer involvement to a minimum and to avoid triggering ERISA coverage.[51] Meanwhile, Illinois law would permit workers at nonparticipating employers to enroll in the program, but guidance from the Labor Department may not permit such participation.[52]

Eligible employees will be enrolled in the plan unless they sign a document opting out. Participating employees can set the amount to be contributed from each paycheck and can change that level at any time.[53] If a worker does not select an amount to contribute, the program sets the level at 3 percent of wages.[54] The program will maintain individual Roth IRA accounts for accounting purposes,[55] but contributions will be pooled to obtain economies of scale.[56] Participating employers have no liability for program design, administration, investments, investment performance, or benefits paid to employees participating in the plan.[57]

Option 3: Work within the voluntary employer-based system

The third broad approach involves the state working within the existing private sector retirement system as a facilitator and educator to encourage—but not require—businesses to adopt ERISA-covered retirement plans. Many business owners and executives may not be familiar with retirement plan options, and providers often find it difficult to reach small businesses with product offerings. In a 2014 survey of Illinois businesses conducted by the Small Business Majority, 10 percent of the business owners cited concerns over how to choose a plan provider as a reason for not offering a plan.[58] In addition, surveys show that many employees have not done much retirement planning and often do not have high levels of financial literacy. A state could help bridge these gaps by conducting education campaigns and by using websites and other communication technologies to bring together employers, financial service providers, and employees.

Example: Washington State Marketplace

In 2015, Washington created the state's Small Business Retirement Marketplace,[59] which will be designed and managed through the state Department of Commerce.[60] Employers with fewer than 100 workers, as well as the self-employed and sole proprietors,[61] will be eligible, though participation will be voluntary for employers and workers. The director will promote the program through a website and electronic marketing materials.[62]

Continued on next page

Under the legislation, the marketplace must offer a variety of investment options and determine whether financial services firms are qualified to take part in the system. Such firms must offer a minimum of two choices: a balanced fund and a fund with asset allocations and maturities that coincide with a worker's expected date of retirement, known as a target date fund. The marketplace also must offer the federal myRA, a new savings program for workers without a plan at their workplace. (See the Appendix for a more detailed discussion of the myRA.) Approved plans must comply with federal law for retirement plans.[63]

The director must identify incentives for employer and employee participation. This includes highlighting federal and state tax credits and benefits for employers and employees who participate in retirement plans. In addition, the director may use public and private funds to provide incentive payments to eligible employers to enroll in the marketplace if those funds are devoted to that purpose.[64]

Plan design considerations

State policymakers can use a variety of tools—either in the enabling legislation or in the program implementation—for incorporating their objectives into the design of a state-sponsored retirement program for private sector employees. For example, they must decide the requirements for employer participation, worker enrollment, investment and protection of contributions, program administration, and the obligations that will be taken on by the state. This plan design discussion covers three broad topics: critical issues for employers, issues affecting employees, and state concerns and overall management.

Critical issues for employers

Employer participation: Voluntary or required?

Several states have considered legislation that would create state-sponsored retirement programs for private sector workers while allowing employers to choose whether to participate in the programs. The Massachusetts and Washington programs encourage but do not require employers to adopt an employee retirement plan covered by ERISA. Either type of voluntary program might appeal to employers that have not previously offered retirement plans because of the cost to create or maintain them.

A critical question is whether a voluntary state-sponsored retirement program will increase retirement savings. Employers in the private sector are not required to provide retirement plans, and the data show that many choose not to. Nationally, 58 percent of full-time, full-year private sector workers have access to a retirement plan at their workplace. That drops to just 22 percent at firms with fewer than 10 employees.[65]

These numbers suggest that although some employers might participate in a voluntary program like a marketplace exchange, there may not be enough participation to generate significant increases in coverage. While it is unclear whether a marketplace exchange would work, a well-publicized and accessible web-based platform for employers to connect with service providers could encourage some businesses to adopt retirement savings plans.

In addition, state policymakers will want to consider whether adoption of a program such as the Massachusetts plan for nonprofit organizations could encourage employers that have retirement plans to drop them to participate in the state program. A switch from an employer-sponsored plan to a state plan could result in reduced benefits for employees and possible additional costs for the state program. Some proposals and laws that require a market analysis or study—including those that require mandatory participation by employers—direct those conducting the studies to consider ways to encourage employers to keep or adopt their own plans.[66]

Requiring some level of employer participation—through the automatic enrollment of employees and payroll deductions with the ability to opt out, for example—is recognized as an effective way to increase both access and participation.

Consequently, most legislative proposals require or contemplate mandatory participation by employers of a specific size that do not offer retirement savings plans.[67] Legislators who prefer not to require employer participation will probably want to assess how to design a program that employers and workers in the state would willingly join. Apart from tax or other incentives, the program would need to demonstrate that it would be cost-effective for employers and provide superior service for employees.

Lawmakers must determine which employers are subject to the program. For example, the Illinois law requires employers with at least 25 workers to participate in the state-sponsored retirement program if they do not offer their own plan or payroll deduction program. In contrast, the California Secure Choice legislation requires participation by private sector employers with at least five employees.

These thresholds for participation may reflect the fear that the costs of participation in a state-run retirement savings program could harm the profitability or viability of the smallest firms. According to the Census Bureau's Statistics of U.S. Businesses, 14 percent of businesses with one to four employees did not survive over a two-year period. That's more than double the 6 to 7 percent exit rate for larger entities.[68] Figure 5 shows the shutdown rates for firms by employment size.

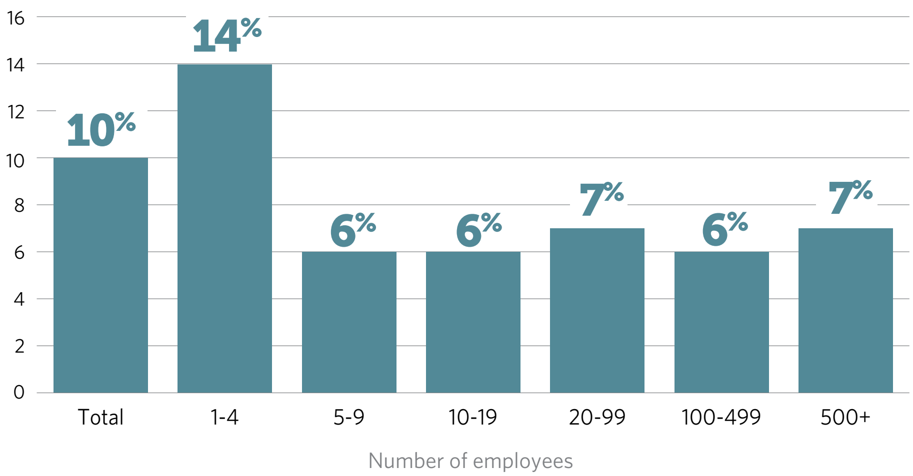
In addition, any law should clearly identify which employees are covered and how the law applies to them. For example, it should be explicit as to whether part-time workers who cannot participate in an employer plan would be eligible for the state plan.

> Nationally, 58 percent of full-time, full-year private sector workers have access to a retirement plan at their workplace. That drops to just 22 percent at firms with fewer than 10 employees.

Figure 5

Small Businesses Have a Much Higher Failure Rate Than Larger Firms

Shutdown rates about double for companies with fewer than 5 workers



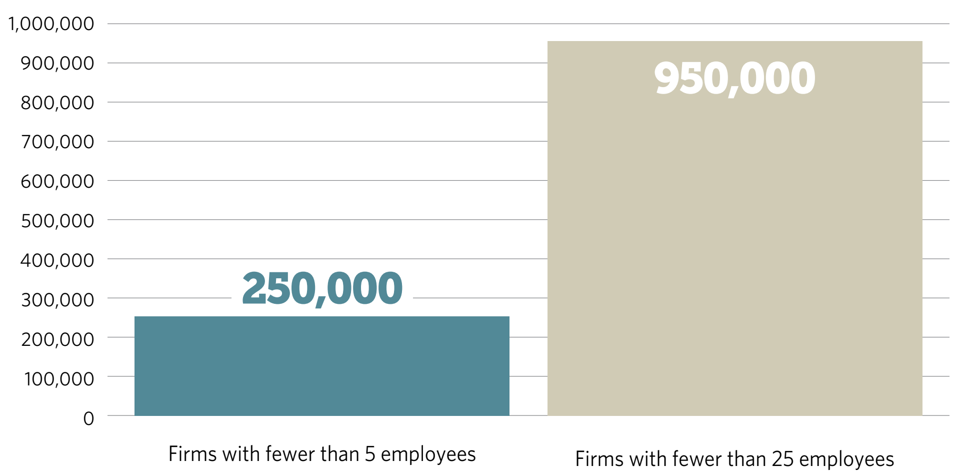
Source: U.S. Census Bureau's Statistics of U.S. Businesses

The size threshold has a significant impact on the overall number of workers covered, as shown in Figure 6. The Illinois legislation will not affect the roughly 950,000 people who work for firms with 24 or fewer employees. If the California threshold of at least five workers were applied in Illinois, an additional 700,000 people could be covered, although some may already be eligible for existing plans.[69]

Figure 6

Many Workers Are Excluded From Illinois Secure Choice

If threshold was 5 employees, 700,000 more could be covered



Source: Calculated from of the Current Population Survey of the U.S. Census Bureau

Employer responsibilities

Under many of these reforms, employers are responsible for enrolling their workers. When crafting programs, state policymakers must set rules for the length and frequency of enrollment periods. Should enrollment last for one week or one month or be open-ended? Should open enrollment occur every year or every other? These are important questions for employers, who must provide communication materials and deal with changes in employee decisions. They will likely need to respond to questions from their workers.

Some legislative proposals would require participating employers to hold periodic open enrollment periods for new hires and employees who previously opted out of the plan.[70] Under the Illinois law, the open enrollment will occur once a year, permitting employees who might not have enrolled earlier to do so. The California law says that once the Secure Choice program is fully implemented, employers must hold an open enrollment period at least once every two years, during which they must automatically re-enroll employees who previously opted out or ended their participation. The workers then must opt out again.[71]

Policymakers should consider the cost and administrative impact of an open enrollment period on employers, especially small businesses, and whether other approaches would be more cost-effective or less burdensome to administer. For example, they might limit the duration or frequency of enrollment periods after initial implementation or use web-based or mobile tools to allow participants to make changes without involving their employer.

Employers probably will communicate informally with employees about the programs and their options. For example, the Illinois law calls for employers to distribute materials developed by the state's retirement security board to workers.[72] Employers are often the point of contact for benefits-related questions, so they can expect employees to ask additional questions about the program, such as contributions, investments, and distributions. States might consider how best to ensure communication between the program and participating employees to balance the efficiency of a workplace-based program with the burdens placed on the employer.

Employer liability

Proposals to establish state-sponsored retirement programs that require employer participation strictly limit the liability of participating employers. In general, policymakers eliminate employer liability for an employee's decision whether to participate, as well as investment performance, plan design, and retirement income paid to participants.[73] These provisions reflect the fact that employers in state-sponsored payroll-deduction-only programs have no control over such matters. These liability limitations would not apply to employers who set up a traditional ERISA-qualified employee retirement plan, because they would be subject to the liability described in the federal law.

Beyond ERISA liability concerns, most state initiatives do not provide explicit sanctions for employers that do not perform their duties under the program, although other state laws, such as those dealing with wage theft, may provide protections.[74] In contrast, Connecticut's study legislation envisions allowing the state to take action against employers that do not meet their obligations.[75] Under the Illinois law, employers can face penalties if they fail to enroll their employees in the program.[76] The law does not set penalties for failing to perform other duties, such as forwarding payroll deduction contributions to the program, although existing state labor law may allow penalties in these cases. Still, the state board administering the program appears to have enforcement authority.[77]

Issues affecting employees

Enrollment rules

The legislative proposals uniformly say that employee participation in a state-sponsored retirement program should be voluntary. Still, proponents intend these programs to significantly increase the number of private sector employees saving for financially secure retirements.

Research in behavioral economics has consistently shown that even minor obligations, such as making a phone call or filling in a form, can keep workers from enrolling in a retirement plan.[78] Consequently, research and industry experience show that automatic enrollment—with the ability to complete a form to opt out—will increase the number of employees who participate in a retirement plan.[79] For example, data from Vanguard's database of 4,700 plan sponsors and 3.9 million participants show that plans with automatic enrollment have a participation rate of 89 percent, compared with 61 percent for plans without automatic enrollment. These effects, though, are somewhat weaker for lower-income workers and workers in small firms, both of which are the focus of state retirement savings proposals.[80]

Because of these findings, most legislation on state-sponsored plans for private sector employees, including the California, Connecticut, Oregon, and Illinois laws, require employers to automatically enroll employees who do not opt out.[81] Whether automatic enrollment would work as well in the state programs is unknown. Many employers that would be covered under these programs are relatively small, with lower-income workforces that may be more likely to opt out. Research also suggests that contribution levels are lower for participants who are enrolled automatically than for those who join a plan voluntarily.[82]

Types of employees covered

States considering legislation must decide which employees would be covered. Most proposals do not have detailed standards, such as full- or part-time status, for determining eligibility of employees to participate in state plans. State legislation typically defines eligible employees as those 18 or older who work for an eligible employer. A few states define eligible employees as workers who earn wages subject to state income taxes.[83]

Still, some legislation includes qualifiers that limit the definition of an eligible employee. For example:

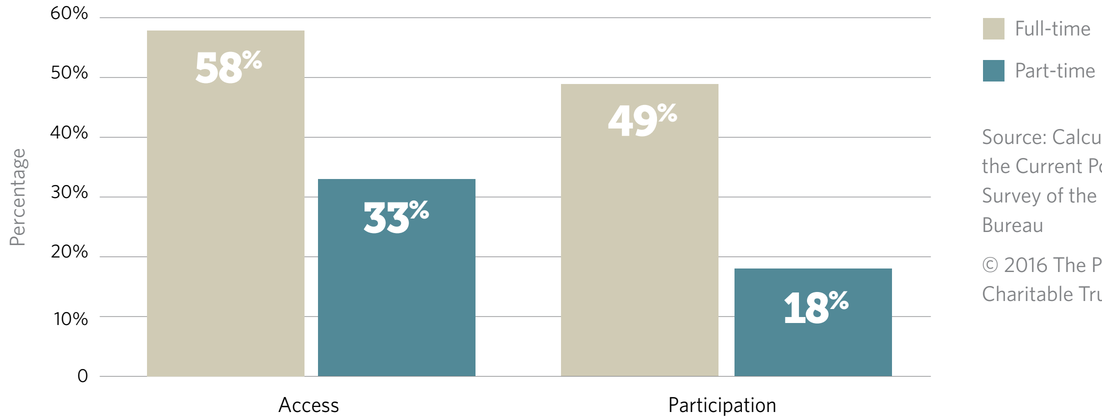
- A number of states exclude those covered by certain federal labor laws or labor contracts or who are otherwise not subject to state legislative power under federal law.[84]
- Two proposals in Massachusetts suggest different approaches to defining employees eligible to enroll in a state-run retirement savings plan other than the CORE program for nonprofit organizations. One bill (H. 924) defines eligible employees as those who work 750 hours in a calendar year;[85] the other (H. 939) requires an employee to have wages subject to state taxation.[86]

How an employee is defined in these programs would have significant effects on access and participation. According to the Labor Department's Bureau of Labor Statistics, 33 percent of the workforce is part time, part year, or a combination of both. Another 19 percent of workers are considered part time, part year, because they work less than 35 hours a week.[87] Figure 7 provides retirement access and participation by full-time or part-time status: Just 33 percent of part-time, full-year workers have access to a workplace retirement plan, and 17 percent participate in such a plan. This is much lower than the rates for full-time workers. (See Figure 7.)[88]

Figure 7

Full-Time Workers Are Much More Likely to Have Access and Participate

Rates much lower for part-time workers



Source: Calculated from the Current Population Survey of the U.S. Census Bureau

In addition, more than 10 million people work as independent contractors, according to the Labor Department,[89] and would not be covered by state retirement savings proposals.

Contributions

Most statewide retirement savings legislation requires employers to withhold employee contributions from pay at a default rate.[90] Employees can choose to make contributions higher or lower than the default rate or opt out altogether.

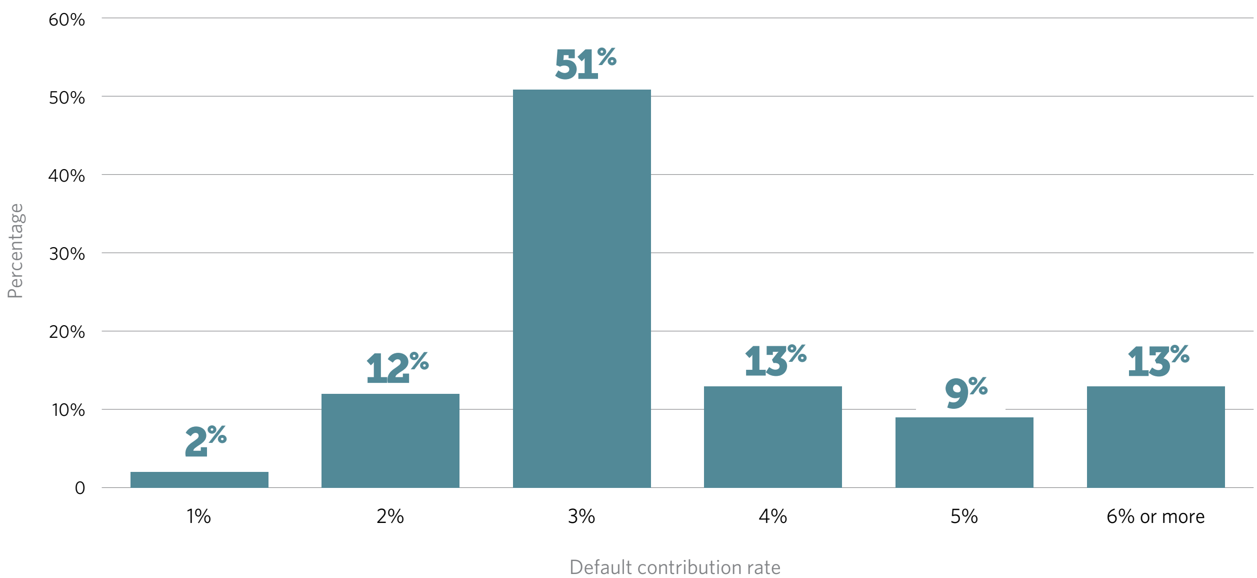
The California and Illinois laws provide for a default contribution rate of 3 percent if an employee does not choose a percentage.[91] California also requires its governing board to determine a minimum and a maximum rate of contribution.[92] The Oregon and Connecticut laws recommend that their boards consider a default rate of contribution; the Connecticut feasibility study, however, proposed a 6 percent contribution rate.[93] California and Oregon both recommend that the default rate be changed over time.[94] California, Connecticut, Oregon, and Illinois would all allow participants to determine or change their contribution rates.[95]

The federal Pension Protection Act of 2006 allowed workers to be automatically enrolled and to contribute at a default rate unless they changed that percentage or opted out. Data collected from private sector plans since the law took effect provide insight into the decisions about default contribution rates. In a 2014 report about its automatic enrollment plans, Vanguard found that about half of all company plans that use automatic enrollment—51 percent—have a default rate of 3 percent of pay. Fourteen percent set the default at 1 or 2 percent, while 35 percent set the default rate at 4 percent or more.[96] Figure 8 below shows the range of default rates.

Figure 8

About Half of Vanguard Plans Set Default Contribution at 3 Percent

Other options used much less frequently



Source: Vanguard, *How America Saves 2014*

The level of the default contributions plays a role in how much a worker can save for retirement. According to an actuarial analysis, workers who saved 3 to 6 percent throughout their careers—with no employer match—would not have enough retirement income for their expected lifetimes.[97] Still, these assets would supplement Social Security benefits for most Americans, and they would probably provide a cushion for financial shocks in old age.

States also have considered allowing voluntary employer contributions,[98] which would be a good way to encourage more employees to participate and build their savings for retirement. However, the November 2015 Department of Labor proposed rule makes clear that employers could not voluntarily contribute to a state-sponsored payroll deduction IRA program. Voluntary employer contributions could be made to a state-sponsored MEP or prototype plan. Minnesota, for example, would permit employers to contribute to an ERISA-covered portion of their retirement savings program.[99]

Investing contributions and protecting savings

In typical defined contribution plans, individuals invest their retirement plan contributions in a range of options, or the contributions are pooled and managed by investment professionals for the participants. The California, Minnesota, and Oregon programs would pool the contributions so they can be invested by professionals.[100] Illinois' program will offer low-risk investment choices to participants and include design elements meant to preserve the safety of the contributions and provide a stable and low-risk rate of return.[101]

In participant-directed plans, participants get their own accounts and are responsible for managing their investments. Pooled investment plans have a single trust account in which contributions are commingled and are usually managed by a third-party administrator. Participants in pooled investment plans do not manage their accounts or direct their investments, so costly enrollment meetings, participant education, and individualized advice are not normally provided.

Pooled investment plans generally cost less to manage and maintain because fewer participant services are needed. Investment management in such plans can be offered at a reduced fee, and because the money is in a single account, the cost of managing assets is lower than in participant-directed plans.[102]

Moreover, a pooled investment plan with a professionally managed investment portfolio may achieve better investment results. Even with the best advice, those in participant-directed plans still have to follow through and make the right choices.

States also must consider how best to oversee the operation of the plans. In Illinois, the enabling legislation requires the Secure Choice Board to conduct a review of the performance of the investment funds, including fees and customer performance, every four years.[103] Fund management professionals suggest reviewing investment returns and expense ratios at least every two to three years, however.[104]

Some proposals try to minimize participants' financial risk and safeguard their investments and returns.[105] California, for example, will provide a guaranteed annual rate of return set by the Secure Choice Board if it is financially feasible. A gain and loss account would be established to smooth out interest contributions when plan investments do not generate the returns sufficient to meet the stated interest rate.[106] Although such guarantee provisions provide important protections against investment risk and volatility, they can be controversial because of the state's involvement in mandating a return and can create new complications. They also can be expensive and difficult to understand. States must consider the potential effect on public finances. Perhaps reflecting these concerns, most state proposals do not include provisions regarding guarantees.

Tax and financial impacts

Most state proposals seek to ensure that savings will be tax deferred under the Internal Revenue Code. However, many participants probably would be lower-income workers who would not benefit much from deferring taxes on the contributions. In addition, many programs do not explicitly provide financial incentives to participate, such as employer matching contributions or refundable tax credits.

Some states, such as Illinois,[107] are using Roth IRAs to allow workers to contribute after-tax money. That could help those who might have a higher tax rate in the future. Moreover, withdrawals of contributions from a Roth IRA are tax-free in certain circumstances, which could appeal to lower-income workers. Earnings on contributions would still be taxable. One complicating factor is that participants cannot roll over Roth IRA accounts into employer-provided retirement plans if they change jobs.

Employee withdrawals

Of the laws already enacted, California's provides the most information on possible withdrawals. Workers would receive an information packet that describes the process for withdrawal of retirement savings.[108] The board conducting the feasibility studies required by the legislation recommended in its report, released in February 2016, that the program limit pre-retirement withdrawals to hardship requests and suggested that the board consider an annuity (lifetime income) option as the plan developed.[109]

The Illinois law requires the state board to set rules for withdrawals that maximize participants' financial security in retirement.[110] Under the Connecticut program, workers can receive annuitized benefits, lump sum payouts on retirement, spousal benefits, and death benefits for designated beneficiaries. Many of the proposals do not discuss pre- or post-retirement withdrawals.

The Labor Department's proposed rule on payroll deduction IRA plans would not allow state programs to limit withdrawals otherwise permitted under federal law, but this exclusion could be changed when the rule is finalized.[111]

As a point of reference, participants in private sector ERISA-covered plans have several options for withdrawing their savings, depending on the timing of or reason for the withdrawal. For example:

- In 2010, more than 25 percent of households with defined contribution plans collectively withdrew more than $70 billion from retirement plan balances for nonretirement spending, according to an analysis of data from the Federal Reserve's Survey of Consumer Finances and the Survey of Income and Program Participation by HelloWallet, a web and mobile application that provides benefits information to workers.[112]
- Participants in some plans can take loans from their accounts. In 2011, 59 percent of 401(k) plans offered a loan plan, 89 percent of plan participants were eligible to take a loan, and 21 percent of those eligible to take loans had an outstanding loan balance.[113] The average loan balance was $7,027, with a median balance of $3,785.[114]
- Based on 2013 data from Vanguard's client base, about 4 percent of participants withdrew about 1 percent of total assets, even though they did not leave their jobs or retire.[115]
- About 30 percent of assets withdrawn were considered hardship withdrawals, such as medical emergencies, while the remaining withdrawals were for other purposes.[116]

Typically, when participants leave their employer or retire, they withdraw plan funds to use in any way they see fit, roll their account to a new plan or IRA, or leave their account where it is. How they handle these changes before retirement will have tax consequences. Vanguard's analysis of the plans it manages shows that 49 percent of those who left jobs kept the accounts in their plans, 22 percent took lump sum payments, and 22 percent rolled their accounts into a new plan or IRA.[117]

Portability of benefits

Most state proposals refer to the portability of savings generally, but this vague concept usually needs to be clarified by state boards or study committees. Most bills provide no guidance. Portability usually refers to the ability of workers to continue to save in a single account even if they change jobs. That is hard to do with benefits from a defined benefit plan, except when they are converted into a lump sum. On the other hand, defined contribution balances can be transferred to a new employer plan or an IRA when a worker changes jobs.

In state-level retirement savings programs, workers could presumably maintain their accounts with the state if they changed jobs, but it is not clear if portability would mean that savings accounts could be transferred to a different state, to an IRA, or to an ERISA plan sponsored by a new employer. As noted above, however, for tax reasons participants cannot roll over their Roth IRA accounts into an employer-provided retirement plan if they change jobs.

State concerns and overall management

Program administration and governance

Many statewide retirement savings proposals are designed so that the plans will not be regulated by ERISA or be considered public sector retirement plans. And that raises important governance issues. Still, the rules for administering plans for either the public or private sectors include requirements for ensuring the integrity of funds and investments, meeting reporting and disclosure responsibilities, and ensuring transparency and accountability.

Regardless of whether they are covered by ERISA, state proposals have many governance provisions in common. Most would appoint a state officer or agency to run the program. For example, the Massachusetts CORE program is run by the state treasurer, and a "not-for-profit defined contribution committee" in the treasurer's office helps develop general policy and provides technical advice.[118] Typically, a state creates a board with appointed members representing different branches of government or sectors of society. Under the California law, the Secure Choice board is part of the state government; it has administrative and managerial duties and acts as trustee for the state's plan.[119] The Illinois board is a state agency made up of legislative and executive appointees who will oversee the program. [120]

The powers given to the boards differ and are typically spelled out in the legislation. In California, the legislation says that the board will be the ultimate plan administrator, though it can hire a third-party administrator. The board must approve an investment management entity but retains certain management duties. For example, every year the board must prepare and adopt a written statement of investment policy.[121]

In Illinois, board members and the investment managers they hire or contract with must carry out their duties only in the interest of the plan participants and beneficiaries.[122] In California, the board has to submit an annual audited financial report that has been prepared by an independent certified public accountant. The board also must disclose full details about program operations and provide periodic reports to participating employers and employees as well.[123] More generally, states can require service providers such as investment managers to issue regular reports so they can properly oversee management.[124]

Paying for the program

State proposals typically require state-affiliated retirement savings programs to be cost-effective and sustainable. In some cases, states provide money for feasibility studies and startup costs, but virtually all programs are meant to be self-sustaining.

For example, under Illinois law, the state can pay administrative costs associated with creation and management of the program until it becomes self-sufficient. The law calls for the program to repay the state for startup costs. The state also requires that maximum annual administrative expenses not exceed 0.75 percent of the total trust balance.[125] Administrative fees pay board expenses and are used to repay the state for any startup costs.

States that are studying options to encourage private sector retirement savings are looking at the costs of various plan designs. The Minnesota law, for example, says its report should include the projected expenses of different plan designs and the fees that would be needed to cover these costs as a percentage of average daily assets.[126]

State liability

Most of the legislation enacted makes clear that states cannot be held liable for investment earnings or plan losses. The Oregon law says that that the state task force cannot recommend a plan or use of an investment product that could create any state liability or obligation for payment.[127] The Connecticut law says the state has no liability for any obligation incurred by the plan.[128] California's law also prohibits state liability and takes an additional step to ensure that the state will not be required to financially support the program by requiring the state to carry insurance or some other funding mechanism to protect the value of individual accounts.[129] In Minnesota, the expected retirement savings plan report must examine options to protect the state from liability and to manage risk to the principal.[130]

Policy implications and trade-offs

Many Americans are not saving enough for a secure retirement, and this savings shortfall could have significant impacts on future retirees and state budgets. To address this, several states have enacted legislation to start state-sponsored retirement plans for private sector employees; others are considering similar actions. Lawmakers who support these plans believe that state-sponsored retirement programs for private sector employees are necessary and feasible.[131]

To date, the most common approach is a savings program in which many employers that do not currently offer retirement savings plans are required to automatically enroll their employees.

States approach the issue of retirement savings differently, reflecting that there are many policy choices. Still, the state proposals generally have three goals in common:

- Increasing retirement savings and security for workers.
- Minimizing administrative and cost burdens for small employers.
- Managing legal and financial risk for the state.

Each policy choice can create conflict among these broad goals and require trade-offs. For example:

- **Employee retirement security and employer burden.**
    - States considering legislation primarily want to boost retirement savings to ensure that residents have enough money for their post-work years. Increasing access to retirement savings plans has proved to be one of the most effective ways to achieve that goal. The vast majority of workers will participate if given a chance, so many state proposals require that most employers automatically enroll their employees. But some employers and advocates have raised concerns that steps such as automatic enrollment will put too much of a burden on small employers, hurt these businesses, and reduce jobs. Burdens on small employers could be reduced by technology or by making exceptions for very small employers, as was done in California.
    - Most proposals require that employees be automatically enrolled, because data show that workers usually do not opt out and will save more than if they had to actively sign up for the plan. The administrative burden on employers can be reduced by requiring them to do no more than distribute state-produced communication materials and to set up and run the payroll process. Still, many workers naturally look to their employers for answers to pay and benefits questions, and employers may feel obligated to respond. Effective outreach campaigns and ongoing communications by the states would address worker questions and probably reduce the number opting out, as well as the burden on employers.

- **State risks and employee retirement security.**
  - Because research shows that employees do not usually opt out or change the default savings rate, states must carefully consider the level at which that rate should be set. Setting it too low could encourage employee participation but result in little savings for retirement. Small account balances also make plan administration less efficient. On the other hand, too high a rate could cause many workers with little discretionary income to opt out altogether. To address these concerns, states could set a modest default contribution rate, such as 3 percent of pay, with a gradual escalation until a maximum level is reached.
  - ERISA, the federal law that governs pensions, provides protections against incompetence or outright malfeasance by employers or service providers. But such protections can be costly and burdensome for a plan sponsor. For proposals to establish and operate state-level retirement savings programs outside ERISA, program designers must balance these costs against the benefits of appropriate protections for workers. Although proposals often aim to limit employer liability, programs still need employer participation to collect contributions and distribute information. When states take on administrative duties such as processing contributions and withdrawals, concerns about malfeasance are reduced. Still, program governance must be designed to address possible malfeasance by state officials.
  - States must also balance how much risk to take with investments while ensuring adequate returns. Low-risk investments protect the savings of participants who often have little financial sophistication, but savings may not grow sufficiently over time. For this reason, states have considered using a mix of low-risk and growth investments, such as a balanced or target date fund. Other proposals would provide some guarantee of return through insurance, a stated rate of interest, or some other method. However, most state proposals explicitly aim to keep costs down to protect taxpayers and do not require a guaranteed return. Added protections, in the form of a guaranteed return backed by the state or an insurance contract, could be costly for the state and could reduce investment returns.[132]
  - To keep costs down, state-run retirement programs will need to achieve both scale and efficiencies in administering many small account balances. Many of the likely participants will be low- to moderate-income workers who, even with features such as automatic enrollment and escalation of contributions, will generate small balances. Managing hundreds of thousands or even millions of account balances could prove expensive. Still, the aggregate assets may generate sufficient returns to offset the administration costs. At the same time, a program that permits participants to choose among investment options can incur higher administrative costs, possibly without returns as good as if the investments were pooled. The federal Thrift Savings Plan (TSP) offers a hybrid approach that combines scale with limited investment offerings in order to achieve cost efficiencies, but such efficiencies may not be transferable to smaller investment pools at the state level.[133]
- **State risks in general.**
  - A key question is whether states have the administrative and fiscal capacity to manage large savings programs, especially when existing federal savings options are considered. Is the federal government, which already regulates private sector and nonprofit employee benefit plans, better suited to create a program? Could MEPs within the ERISA framework be the right approach? Alternatively, states could craft their own statewide retirement savings programs by taking into account their experiences with employee benefit plans for public employees, with health care exchanges under the federal Affordable Care Act, or with 529 college savings plans.

Conclusion

Many Americans face the prospect of inadequate retirement savings, mainly because they lack access to an employer-sponsored retirement savings program. To address this issue, states are proposing a variety of reforms, and early indications are that they can feasibly implement retirement savings programs. Given the range of possible approaches, policymakers will have to identify and set priorities that balance competing risks and trade-offs. They also will need to consider the specific demographics of their states as they consider how to boost the retirement savings of their constituents. The states are arriving at individual conclusions on key issues, which will probably produce a range of approaches and program designs.

Appendix: Summary of federal regulation of retirement savings

Federal tax law

Individuals who participate in a tax-qualified employer retirement plan or a traditional individual retirement account (IRA)[134] generally do not pay federal income tax on contributions until they are withdrawn. Investment earnings are not taxed as they accumulate in the account.[135] Instead, individuals pay income tax on withdrawals in the year the funds are taken from the account. Those who withdraw money before what are known as permissible events such as retirement generally must pay a penalty, unless the withdrawal is for a reason permitted by federal tax law. These types of retirement savings accounts benefit those who expect that their tax rate will be lower after they retire.

Federal law sets different contribution limits for various types of plans. For example, 401(k) plan participants could contribute up to $18,000 in 2015, while IRA contributions were capped at $5,500 for the year (participants ages 50 and older can make additional contributions).[136] However, federal law includes additional restrictions to prevent retirement plans from being used as tax shelters for upper-income people. Under federal law, administrators must ensure that contributions and account levels for upper-income participants and key personnel, such as managers and owners, are not disproportionately higher than for rank-and-file workers.

The tax law treats contributions and withdrawals from a Roth IRA differently. Contributions to these funds are taxed in the year they are made, but they can be withdrawn tax free at any time.[137] Investment earnings accumulate in the Roth IRA tax free and are not taxed at all under certain conditions.[138] If money is withdrawn early, in most cases the individual must pay taxes on the earnings and a penalty. Roth IRAs benefit those who may need to withdraw money tax free before they retire.

Federal law also provides incentives to save. Workers with modest incomes who participate in a retirement plan can receive a tax credit of up to $2,000. The amount depends on the individual's income and tax filing status.[139] Eligible workers can receive this credit even if they contributed to a traditional IRA and if the contributions were excluded from their taxable income.[140]

The Employee Retirement Income Security Act

The Employee Retirement Income Security Act (ERISA) is the federal law that regulates most private sector employee benefit plans, including retirement and health plans. ERISA protects plan participants through reporting and disclosure requirements. It also sets rules for certain transactions to avoid improper use of plan assets by plan sponsors or service providers.[141] It requires plans to establish claims and appeal processes for participants and gives them the right, within limits, to sue for benefits or breaches of fiduciary duties. These rules generally are administered and enforced by the U.S. Department of Labor.[142]

ERISA sets standards for the behavior of individuals and companies responsible for managing the plan or its assets. It requires fiduciaries to perform their duties exclusively in the interests of the plan, its participants, and their beneficiaries. ERISA requires fiduciaries to act with the same level of care and diligence that knowledgeable, prudent people would use to manage their own financial affairs. Those responsible must avoid even the appearance of conflicts of interest that could benefit them or harm the plan.[143]

ERISA generally prevents or pre-empts states from creating laws that are "related to employee benefit plans, unless the plans are for public employees."[144] But states can make laws about arrangements that are not considered "employee benefit plans." The Labor Department has interpreted the law to say that arrangements that permit payroll deduction and prompt transfer of voluntary employee contributions to IRA accounts are not "employee benefit plans" as long as the employer's role remains minimal. The agency also says that role remains minimal even if the employer sets up the arrangement with a financial institution, encourages employees to save, and distributes information from the IRA provider. All materials distributed, however, must "clearly and prominently state, in language reasonably calculated to be understood by the average employee, that the IRA payroll deduction program is completely voluntary."[145]

New federal proposals: The myRA initiative

In January 2014, President Barack Obama used his executive authority to direct the Treasury Department to create the myRA option to help Americans start saving for retirement.[146] That December, the agency announced a program that will offer Roth IRAs invested in a risk-free Treasury security to workers whose employers do not sponsor plans. The Labor Department determined that myRA accounts were not "employee benefit plans" covered by ERISA.[147]

The myRA program will be voluntary for employers and employees. The accounts can have maximum balances of $15,000 and cannot be maintained for more than 30 years. When either of these limits is reached, savings will be transferred to a private sector Roth IRA, which has no maximum balance. On Nov. 4, 2015, the Treasury began offering myRAs on a nationwide basis.[148]

With its cap on savings, the myRA program is not designed to allow people to save enough for a financially secure retirement, but rather to start on that path. Although investment in myRA may be risk free from an investment risk perspective, state policymakers may want a program that offers eligible workers investment choices that could encourage greater participation in their program.

Table 1

State Retirement Savings Proposals for Private Sector Workers Since 2012 (as of April 2016)

State	Legislation proposed	Proposal type and status		
		Feasibility study	Savings plan	Other
Alabama	Not yet proposed			
Alaska	Not yet proposed			
Arizona	Proposed		Pending	
Arkansas	Not yet proposed			
California	Proposed	Enacted	Pending	
Colorado	Proposed	Failed	Pending	
Connecticut	Proposed	Enacted	Pending	
Delaware	Not yet proposed			
Florida	Not yet proposed			
Georgia	Proposed		Failed	
Hawaii	Proposed		Failed	
Idaho	Not yet proposed			
Illinois	Proposed		Enacted	
Indiana	Proposed		Failed	Failed
Iowa	Proposed		Pending	
Kansas	Not yet proposed			
Kentucky	Proposed		Failed	
Louisiana	Proposed		Failed	
Maine	Proposed	Failed	Failed	
Maryland	Proposed	Failed	Enacted	
Massachusetts	Proposed	Pending	Pending	Enacted
Michigan	Not yet proposed			
Minnesota	Proposed	Enacted		
Mississippi	Not yet proposed			
Missouri	Not yet proposed			
Montana	Not yet proposed			
Nebraska	Proposed	Failed		
Nevada	Not yet proposed			
New Hampshire	Proposed	Failed		
New Jersey	Proposed		Failed	
New Mexico	Not yet proposed			
New York	Proposed		Pending	
North Carolina	Proposed	Pending		
North Dakota	Proposed		Failed	
Ohio	Proposed	Failed	Failed	
Oklahoma	Not yet proposed			
Oregon	Proposed		Enacted	
Pennsylvania	Proposed	Failed		
Rhode Island	Proposed		Pending	
South Carolina	Not yet proposed			
South Dakota	Not yet proposed			
Tennessee	Not yet proposed			
Texas	Not yet proposed			
Utah	Proposed		Failed	Enacted
Vermont	Proposed	Enacted		
Virginia	Proposed	Enacted		
Washington	Proposed			Enacted
West Virginia	Proposed	Failed		
Wisconsin	Proposed	Failed	Failed	
Wyoming	Not yet proposed			

✓ Legislation proposed ✓ Legislation not yet proposed ★ Enacted ★ Failed ● Pending

Note on the "Other" category: New Jersey and Washington enacted market exchange programs in which retirement plan service providers offer products and services to certain employers. Massachusetts has created a program for small nonprofits to adopt an ERISA-covered plan. Utah has enacted a nonbinding resolution that encourages retirement savings. More discussion on these approaches is provided in the section titled "Three Approaches."

Note on legislative status: "Enacted" means that legislation has passed the legislature and been signed by the governor. "Pending" means that legislation is pending before the legislature. "Not passed" means that legislation was voted down or failed to pass the legislature during this, or a previous, session.

Endnotes

1 Howard Iams, Irena Dushi, and Jules Lichtenstein, "Retirement Plan Coverage by Firm Size: An Update," *Social Security Bulletin* 75, no. 2 (2015): 41–55, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2604116.

2 Bureau of Labor Statistics, "Employee Benefits in the United States–March 2015" (July 25, 2015), http://www.bls.gov/news.release/pdf/ebs2.pdf, Table 1, 5–6.

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4 Jeffrey Stinson, "Offering State-Sponsored IRAs to Private-Sector Workers," Stateline, The Pew Charitable Trusts (July 13, 2014), 3–5, http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/07/18/offering-state-sponsored-iras-to-private-sector-workers; Elizabeth Olson, "Some States Look to Fill a Retirement Savings Gap," *The New York Times* (July 4, 2014), http://www.nytimes.com/2014/07/05/your-money/some-states-look-to-fill-a-retirement-savings-gap.html?_r=0.

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6 U.S. Government Accountability Office, "Federal Action Could Help State Efforts to Expand Private Sector Coverage," GAO-15-556 (September 2015), http://www.gao.gov/products/GAO-15-556. A person is not legally required to wait until the end of the year to make an IRA contribution. Also, a number of financial service providers offer payroll deduction IRAs that permit periodic contributions throughout the year.

7 The Pension Benefit Guaranty Corporation (PBGC) can help provide benefits when sponsoring employers cannot meet their plan obligations, but the benefits provided through the PBGC are usually lower than promised benefits.

8 For a general overview, see Ethan Kra and Lane West, "Pension Risk and Your Retirement," American Academy of Actuaries, (April 4, 2011), http://www.actuary.org/pdf/Hill_Briefing_Pension_Risk_and_Your_Retirement_April percent204_2011.pdf.

9 U.S. Department of Labor, *Private Pension Plan Bulletin Historical Tables and Graphs*, Tables E1 and E8 (November 2012), http://www.dol.gov/ebsa/pdf/historicaltables.pdf. These figures refer to active employed and unemployed private sector workers. The same trends are seen using a different set of individuals. In terms of active workers, retirees, and beneficiaries, defined benefit plans covered 33 million Americans in 1975, and by 2012 they covered 39.8 million. The number of workers and beneficiaries covered by defined contribution plans increased from nearly 11.5 million in 1975 to more than 90 million in 2012 (Table E5). Total employment data and employment level of the civilian labor force are from the U.S. Department of Labor's Bureau of Labor Statistics website, data series id LNS12000000, at http://www.bls.gov/data/#employment.

10 Edward N. Wolff, *The Transformation of the American Pension System* (Kalamazoo, Michigan: W.E. Upjohn Institute for Employment Research, 2011), 89–102, http://research.upjohn.org/up_press/214.

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13 Employee Benefit Research Institute, "Retirement Savings Shortfalls: Evidence from EBRI's Retirement Security Projection Model," issue brief no. 410 (February 2015), https://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=5487. The results are for all U.S. households with a head 35 to 64 years old. Similarly, the National Institute on Retirement Security finds that the retirement savings deficit is between $6.8 trillion and $14.0 trillion. Nari Rhee, *The Retirement Savings Crisis: Is It Worse Than We Think?* National Institute of Retirement Studies (June 2013), http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf.

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the NRRI, a replacement rate, which is the projected retirement income as a percent of pre-retirement earnings, is calculated from the Survey of Consumer Finances, and that rate is compared against a benchmark rate defined as adequate. If households do not fall within 10 percent of the benchmark, they are classified as "at risk."

16 Tatjana Meschede, Laura Sullivan, and Thomas Shapiro, "The Crisis of Economic Insecurity for African-American and Latino Seniors," Demos and the Institute on Assets & Social Policy (September 2011), http://www.demos.org/sites/default/files/publications/IASP%20Demos%20Senior%20of%20Color%20Brief%20September%202011.pdf.

17 There are many such rules of thumb, including one from the MintLife website: Jim Drury, "How Can You Be Sure You Have Enough to Retire?" (Nov. 11, 2008), (http://www.mint.com/blog/finance-core/how-can-you-be-sure-you-have-enough-to-retire/). See also this blog post by Dan Ariely on the problems of such rules of thumb: "Asking the Right and Wrong Questions" (Aug. 30, 2011), http://danariely.com/2011/08/30/asking-the-right-and-wrong-questions/.

18 EBRI presents 401(k) account balance data based on its EBRI/ICI 401(k) database, finding that in 2013 the average 401(k) plan in its database had a balance of $72,383 with a median account balance of $18,433. EBRI also finds higher account balances for older age groups. Fifty-two percent of accounts with less than $10,000 belong to participants in their 20s and 30s, while 60 percent of accounts with more than $100,000 belong to those in their 50s and 60s. Employee Benefits Research Institute, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2013," issue brief no. 408 (December 2014), http://www.ebri.org/pdf/briefspdf/EBRI_IB_408_Dec14.401(k)-update.pdf. Vanguard's analysis of its plans conducted in 2013 found the average account balance for defined contribution plans to be $101,650 with a median balance of $31,396. Those near retirement had larger account balances. Those ages 55-64 had an average account balance of $180,771. The median account balance for this age group was $76,381. Vanguard Group Inc., *How America Saves 2014: A Report on Vanguard 2013 Defined Contribution Plan Data* (June 2014), https://pressroom.vanguard.com/content/nonindexed/How_America_Saves_2014.pdf.

19 Employee Benefits Research Institute, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2013." Employer-sponsored plans are but one possible source of retirement income. Nearly all older individuals receive Social Security benefits, and the average annual benefit is $15,600. Social Security Administration, "Monthly Statistical Snapshot, April 2015," Table 1, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/2015-04.html/

20 The Pew Charitable Trusts, *The Complex Story of American Debt* (July 2015), http://www.pewtrusts.org/~/media/Assets/2015/07/Reach-of-Debt-Report_ARTFINAL.pdf?la=en. In addition, the level of debt held by people in their 60s, as a share of their assets, increased from 10 percent in 1998 to 18 percent in 2010. Squared Away Blog, "More Carrying Debt Into Retirement," Center for Retirement Research at Boston College (Aug. 22, 2013), http://squaredawayblog.bc.edu/squared-away/more-carrying-debt-into-retirement/.

21 James M. Poterba, Steven F. Venti, and David A. Wise, "Were They Prepared for Retirement? Financial Status at Advanced Ages in the HRS and AHEAD Cohorts," National Bureau of Economic Research working paper no. 17824 (February 2012), http://www.nber.org/papers/w17824.

22 Michael D. Hurd and Susan Rohwedder, "Economic Preparation for Retirement," National Bureau of Economic Research working paper no. 17203 (July 2011), http://www.nber.org/papers/w17203.

23 Connecticut General Statutes, Chapter 574, Connecticut Retirement Security Board Public Retirement Plan, Section 31-414 (a) (2) (A) and (B), http://www.cga.ct.gov/2015/pub/chap_574.htm; Vermont Act No. 179, Section C. 108 (c) (1) (a) (i)-(vi), http://legislature.vermont.gov/assets/Documents/2014/Docs/ACTS/ACT179/ACT179%20As%20Enacted.pdf; and 2014 Minnesota Session Laws, Chapter 239, article 2, s10 (b) (1), (3), (7), and (d), https://www.revisor.mn.gov/laws/?year=2014&type=0&doctype=Chapter&id=239&format=.

24 See California Senate Bill 1234, Chapter 734, Section 1 (c), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234.

25 For example, Oregon Enrolled House Bill 2960, Section 3 (1) (q) states: "The plan developed and established by the Oregon Retirement Savings Board ... must: ... (q) Keep administrative fees in the plan low," https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB2960.

26 Connecticut General Statutes, Chapter 574, Connecticut Retirement Security Board Public Retirement Plan Sections 31-415 (1) and (23), http://www.cga.ct.gov/2015/pub/chap_574.htm; Oregon Laws 2013 Chapter 714, Section (b) (3), https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0714.pdf.

27 California Government Code Sections 100013 and 100036, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; Connecticut General Statutes, Chapter 574, Connecticut Retirement Security Board Public Retirement Plan, Section 31-415 (23), http://www.cga.ct.gov/2015/pub/chap_574.htm; Illinois Public Act 098-1150, Sections 45 (b) (3), 50, and 70, https://legiscan.com/IL/text/SB2758/id/1059485/Illinois-2013-SB2758-Chaptered.html; Minnesota Session Laws, Chapter 239, article 2, s10 (a) and (b) (4) https://www.revisor.mn.gov/laws/?year=2014&type=0&doctype=Chapter&id=239&format=.

28 Illinois Public Act 098-1150, Section 30 (c), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

29 See, for example, Connecticut General Statutes, Chapter 574, Connecticut Retirement Security Board Public Retirement Plan, Section 31-415 (a) (8), (9), http://www.cga.ct.gov/2015/pub/chap_574.htm; Connecticut Retirement Security Board's report to the Legislature (January 2016), http://www.osc.ct.gov/crsb/docs/finalreport/CRSB_January_1_Report.pdf.

30 See, for example, New Jersey proposed legislation, Assembly Bill 4275, Section 8 (a) (5), http://www.njleg.state.nj.us/2014/Bills/A4500/4275_I1.HTM.

31 U.S. Department of Labor, Employee Benefits Security Administration, "Savings Arrangements Established by States for Non-Governmental Employees," proposed rule, 29 C.F.R. 2510, RIN 1210-AB71, Federal Register 80, no. 222, pp. 72006–72014 (Nov. 18, 2015), http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28542&AgencyId=8&DocumentType=1; U.S. Department of Labor, Employee Benefits Security Administration, "Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974," 29 C.F.R. 2509, RIN 1210-AB74, Federal Register v. 80, no. 222, pp. 71936-71940 (Nov. 18, 2015), http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3.

32 Multiple employer plans (MEPs) should not be confused with multi-employer plans, which are plans usually created and operated under a collective bargaining arrangement between employers and a union.

33 Main Street Alliance/American Sustainable Business Council, "Poll Report: Small Business Owners' Views on Retirement Security" (June 2013), http://asbcouncil.org/sites/default/files/library/docs/asbc_retirement_poll_report_june2013.pdf.

34 Small Business Majority, "Opinion Poll: Small Businesses Believe Illinois Needs to Do More to Help Workers Prepare for Retirement, Support Legislation Doing So" (Nov. 18, 2014), http://www.smallbusinessmajority.org/sites/default/files/research-reports/111814-Illinois-Retirement-Poll.pdf.

35 There are additional requirements, and the IRS and the DOL seem to have differing interpretations of those requirements. For example, it is not clear whether the participating employers need to share some common economic or representational interests. See, for example, Treasury regulations 1.413-2, https://www.gpo.gov/fdsys/pkg/CFR-2006-title26-vol5/pdf/CFR-2006-title26-vol5-sec1-413-2.pdf, and 1.414 (l), https://www.gpo.gov/fdsys/pkg/CFR-2011-title26-vol5/pdf/CFR-2011-title26-vol5-sec1-414c-1.pdf; May 25, 2012, http://www.dol.gov/ebsa/regs/aos/ao2012-04a.html. The reduced fiduciary burden is not specific to MEPs. A single employer plan can achieve the same result by designating a service provider as the named fiduciary, administrator, investment manager, etc.

36 According to the Labor Department's guidance, a private sector organization that would sponsor a MEP must be tied to the contributing employers or their employees by genuine economic or representational interests unrelated to the provision of benefits, which would preclude many financial service firms that would otherwise organize MEPs for their clients. In contrast, "a state has a unique representational interest in the health and welfare of its citizens that connects it to the in-state employers that choose to participate in the state MEP and their employees, such that the state should be considered to act indirectly in the interest of the participating employers. Having this unique nexus distinguishes the state MEP from other business enterprises that underwrite benefits or provide administrative services to several unrelated employers." U.S. Department of Labor, "Interpretive Bulletin Relating to State Savings Programs."

37 Massachusetts Session Law, "An Act Providing Retirement Options for Nonprofit Organizations," Chapter 29, Section 64E (March 22, 2012), https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter60.

38 Massachusetts Governor Deval Patrick, "Governor Patrick Signs Bill Creating Retirement Support for Small Non-Profits" (March 22, 2012), news release, http://archives.lib.state.ma.us/bitstream/handle/2452/125942/ocn795183245-2012-03-22c.PDF?sequence=1.

39 Massachusetts Session Law, "An Act Providing Retirement Options for Nonprofit Organizations."

40 U.S. Department of Labor regulation, "Employee Pension Benefit Plan," 29 C.F.R. 2510.3-2(d), https://www.law.cornell.edu/cfr/text/29/2510.3-2.

41 Ibid.

42 See U.S. Department of Labor, "Fact Sheet—White House Conference on Aging" (July 2015), http://www.dol.gov/ebsa/newsroom/fswhconferenceonaging.html.

43 U.S. Department of Labor, 29 C.F.R. 2509.99-1, "Interpretive Bulletin Relating to Payroll Deduction IRAs," 64 Federal Register 33001 (June 18, 1999), https://www.law.cornell.edu/cfr/text/29/2509.99-1?qt-cfr_tabs=0#qt-cfr_tabs. Also see U.S. Department of Labor and Internal Revenue Service, "Payroll Deduction IRAs for Small Businesses" (October 2014), http://www.dol.gov/ebsa/pdf/PayrollDeductionIRAs.pdf.

44 U.S. Department of Labor, proposed rule, "Savings Arrangements Established by States for Non-Governmental Employees," Fed. Reg. v. 80, no. 222, pp. 72006-72014 (Nov. 18, 2015), http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28542&AgencyId=8&DocumentType=1.

45 Illinois Public Act 098-1150, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

46 Ibid.

47 Ibid., Sections 60 and 93. Implementation may be delayed if the board does not obtain adequate funds to implement the program by June 17, 2017. The law requires that the plan qualify for the favorable tax treatment ordinarily provided to Roth IRAs or that the federal government determines it to fall outside of ERISA.

48 Ibid., Section 25.

49 Ibid., Section 70.

50 Ibid., Section 5. A private sector or nonprofit employer must participate in the program if at all times during the previous year it had at least 25 employees in Illinois, has been in business at least two years, and has not offered a qualified retirement plan in the preceding two years. Any other employer is considered a "small employer." For the purposes of the program, the term "employee" covers only workers who are at least 18 years old.

51 Ibid. The DOL proposed rule provision is at 29 C.F.R. Section 2510.3-2 (h) (x), http://webapps.dol.gov/federalregister/HtmlDisplay.aspx?DocId=28542&AgencyId=8.

52 Illinois Public Act 098-1150 requires the board to establish a process by which an individual might voluntarily enroll in and contribute, but the term "individual" is not defined by the plan, so it is unclear whether this includes employees of nonparticipating employers or even individuals who do not work at all. Illinois Public Act 098-1150, Section 30 (j), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

53 Illinois Public Act 098-1150, Section 60. The contribution may be a specific dollar amount or a specific percentage of wages as long as the amount does not cause the employee to exceed the amount allowed under the Internal Revenue Code.

54 Ibid. The board will design and establish the enrollment process, including the process that employees can use to opt out of the program. The board also will establish the process for payroll deduction contributions. Illinois Public Act 098-1150, Section 30 (h) and (i), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

55 Ibid., Section 15.

56 Ibid., Section 30 (a) (4) and (g).

57 Ibid., Section 30 (h).

58 Small Business Majority, "Opinion Poll."

59 Washington State Legislature, bill information, history of the bill, Substitute Senate Bill 5826 from the Washington 2015 Regular Legislative Session, http://app.leg.wa.gov/billinfo/summary.aspx?bill=5826&year=2015#documents.

60 Washington State Legislature, Substitute Senate Bill 5826 from the Washington 2015 Regular Legislative Session, codified as Chapter 296, 2015 Laws, Section 3 (3), http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate percent20Passed percent20Legislature/5826-S.PL.pdf.

61 Although definitions of sole proprietorship can vary from state to state, the term is generally understood to mean an unincorporated business owned and run by one individual with no distinction between the business and the owner. The owner is entitled to all profits, is responsible for all debts, losses, and liabilities, and pays personal income taxes on taxable business income.

62 Ibid., sections (3), (3), and (12), and 4 (1) (b), and (c).

63 Ibid., sections 3 (4), 3 (7), and 3 (9).

64 Ibid., sections 4 (1) (d) and Section 7.

65 The Pew Charitable Trusts, *Who's In, Who's Out: A Look at Access to Employer-Based Retirement Plans Across the 50 States* (January 2016), http://www.pewtrusts.org/en/research-and-analysis/reports/2016/01/a-look-at-access-to-employer-based-retirement-plans-and-participation-in-the-states. These figures are taken from the Current Population Survey. A five-year pooled sample of CPS ASEC March Supplement data was used. Reported figures are for private sector wage and salary workers ages 18-64 who are classified as full time and who worked at least 50 weeks in the previous calendar year. Estimates of retirement plan access and participation vary across different data sources. For example, one study found that among private sector, full-time workers, the reported CPS access rate was 15 percentage

points lower than that in the Department of Labor's National Compensation Survey (NCS). Methodological differences, such as the underlying sample or the phrasing of the survey questions, contribute to some of the variation. Furthermore, previous work suggests that respondents tend to underreport retirement plan access and participation when compared with administrative data. There is no single, definitive benchmark figure for retirement plan access and participation.

66 For example, the Illinois Secure Choice legislation permits the Secure Choice board to set up a website for employers to select retirement plan service providers. Illinois Public Act 098-1150 Section 60 (i), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

67 See, for example, Illinois Public Act 098-1150 Section 5, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150; California Government Code Section 100034 (e)(2), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

68 U.S. Census Bureau, Employment Change Data for 2011-2012, U.S. and states, totals, https://www.census.gov/econ/susb/data/susb2011.html.

69 U.S. Census Bureau, Statistics of U.S. Businesses, http://www.census.gov/econ/susb/.

70 Illinois Public Act 098-1150, Sections 55 and 60, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150, California Senate Bill 1234, Section 10003 (e) (2), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

71 California Government Code Section 100000, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

72 Illinois Public Act 098-1150, Section 55, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150. The law states: "Participating employers shall supply the employee information packet to employees upon launch of the Program. Participating employers shall supply the employee information packet to new employees at the time of hiring."

73 Connecticut Public Act No. 14-217, Section 185 (a) (16), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm; California Government Code Section 100034, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; Oregon Laws 2013, Chapter 714, Section 2(c), https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0714.pdf; Illinois Public Act 098-1150 Section 75, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

74 California Government Code, Section 100034, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; Oregon Laws 2013, chapter 714, Section 2(c), https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0714.pdf. However, the federal Internal Revenue Code does prohibit transactions involving employee wages and contributions that probably would apply to IRA contributions.

75 Connecticut Public Act No. 14-217, Sections 185 (a) (16) and (20), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

76 Illinois Public Act 098-1150, Section 85, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

77 Illinois Public Act 098-1150, Section 30 (h) and 30 (s), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150; California Government Code Sections 100010 (a) (15) and 100012, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

78 Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008).

79 Shlomo Benartzi and Richard H. Thaler, "Behavioral Economics and the Retirement Savings Crisis," *Science* 339 (2013): 1152–3, http://faculty.chicagobooth.edu/Richard.Thaler/research/pdf/Behavioral percent20Economics percent20and percent20the percent20Retirement percent20Savings percent20Crisis.pdf; Shlomo Benartzi, Alessandro Previtero, and Richard H. Thaler, "Annuitization Puzzles," *Journal of Economic Perspectives* 25, no. 4 (2011): 143–64, https://www.aeaweb.org/articles?id=10.1257/jep.25.4.143; Shlomo Benartzi and Richard H. Thaler, "Heuristics and Biases in Retirement Savings Behavior," *Journal of Economic Perspectives* 21, no. 3 (2007): 81–104, http://www.jstor.org/stable/30033736; J. Mark Iwry and John A. Turner, "Automatic Anunitization: New Behavioral Strategies for Expanding Lifetime Income in 401(k)s," Retirement Security Project no. 2009-2 (July 2009), http://www.brookings.edu/~/media/research/files/papers/2010/1/07-annuitization-iwry/07_annuitization_iwry.pdf.

80 The Vanguard Group Inc., *How America Saves* (2015), Figure 27 and accompanying text, https://institutional.vanguard.com/iam/pdf/HAS15.pdf.

81 California Government Code, Section 1000032, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; Report and Recommendations of the Oregon Retirement Savings Task Force Created and Tasked Pursuant to H.B. 3436 (2013), recommendations (1) and (3), https://olis.leg.state.or.us/liz/2013I1/Downloads/CommitteeMeetingDocument/40906; Connecticut Public Act No. 14-217, Sections 185 (15) and (17), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

82 For example, see Barbara Butrica and Nadia Karamcheva, "The Relationship Between Automatic Enrollment and DC Plan Contributions: Evidence From a National Survey of Older Workers," Working Paper 2015-14, Center for Retirement Research at Boston College (July 2015), http://crr.bc.edu/wp-content/uploads/2015/06/wp_2015-14.pdf.

83 Illinois Public Act, 098-1150, Section 60, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150; New Jersey Secure Choice Savings Program Act of 2015, No. 4275, 216th Legislature, Section 2, http://www.njleg.state.nj.us/2014/Bills/A4500/4275_I1.PDF; Massachusetts Legislature, "An Act to Encourage Retirement Planning of 2015, H. 939, Section 1, https://malegislature.gov/Bills/189/House/H939.

84 Some states exclude those who are covered by the federal Railway and Labor Act or are otherwise not subject to state legislative power due to federal law. Employees covered by a collective bargaining agreement that provides a plan generally stipulated as a multi-employer Taft-Hartley pension plan are also excluded. California, Kentucky, Maine, and Maryland have both of these exclusions. California Government Code, Section 100000(c), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; Kentucky Legislature, "An Act Relating to Small Business Deferred Compensation of 2015," H.B. 261, Section 2, http://www.lrc.ky.gov/record/15RS/HB261.htm; Maine Legislature, "An Act to Create a Public Option Pension System," L.D. 768, Section 3 (2),http://legislature.maine.gov/legis/bills/getPDF.asp?paper=HP0521&item=1&snum=127; Maryland Legislature, "An Act Concerning Maryland Secure Choice Retirement Savings Program and Trust of 2015," S.B. 312, 2015 regular session, Section 1 (C). http://mgaleg.maryland.gov/2015RS/bills/sb/sb0312f.pdf. In its originally proposed form, a Connecticut bill identifies eligible employees as those employed by a qualifying employer, excluding those younger than 18 years old and those covered by a collective bargaining agreement.

85 Massachusetts General Laws, "An Act Relative to Secure Choice Retirement Savings Plan of 2015," H. 924, Section 1 (b), https://malegislature.gov/Bills/189/House/H924.

86 Massachusetts General Laws, "An Act to Encourage Retirement Planning of 2015," H. 939, Section 3, https://malegislature.gov/Bills/189/House/H939. For example, it is possible that out-of-state workers could have income not subject to taxation in the home state of the employer, so the law would only target in-state workers.

87 U.S. Department of Labor, Bureau of Labor Statistics, data based on the Current Population Survey, http://www.bls.gov/cps/lfcharacteristics.htm#schedules.

88 Figures are calculated from the Current Population Survey using a five-year pooled sample from the 2010-2014 ASEC March Supplement. Figures reported are for private sector wage and salary workers, ages 18-64, working at least 50 weeks a year. By excluding part-year workers (those working less than 50 weeks a year), slightly less than half of those identified as part-time workers are excluded, and approximately 15 percent of full-time workers are excluded. Calculating access and participation for full- and part-time workers, including part-year workers, yields lower estimates of access and participation. Accounting for both full- and part-year workers, 54.3 percent of full-time workers have access and 45.0 percent participate in a workplace retirement plan. Among part-time workers, 28.6 percent have access and 12.6 percent participate.

89 The Bureau of Labor Statistics of the U.S. Department of Labor provides data from 2005. More information is available at http://www.bls.gov/news.release/pdf/conemp.pdf, 2015.

90 Shlomo Benartzi and Richard H. Thaler, "Behavioral Economics and the Retirement Savings Crisis," 1152–3.

91 California Government Code, Section 100032 (h), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=. The board could change the default from 2 to 4 percent, Section 1000032(i); Illinois Public Act, 098-1150, Section 60 (c), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

92 California Government Code, Section 100010 (11) (a), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

93 Connecticut Public Act No. 14-217, Section 185 (a) (10), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm; "Report and Recommendations of the Oregon Retirement Savings Task Force Created and Tasked Pursuant to HB 3436 (2013)," recommendation 2, page 23, https://olis.leg.state.or.us/liz/2013I1/Downloads/CommitteeMeetingDocument/40906.

94 California Government Code, Section 100032 (i), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; "Report and Recommendations of the Oregon Retirement Savings Task Force."

95 California Government Code, Section 100032 (h), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=; "Report and Recommendations of the Oregon Retirement Savings Task Force," recommendations 1 and 3, page 23, https://olis.leg.state.or.us/liz/2013I1/Downloads/CommitteeMeetingDocument/40906; Connecticut Public Act No. 14-217, Sections 175 (15) and (18), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm; Illinois Public Act, 098-1150, Section 60. The contribution may be a specific dollar amount or a specific percentage of wages as long as the amount does not cause the employee to exceed the amount allowed under the Internal Revenue Code, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

96 The Vanguard Group Inc., *How America Saves* (2015). In addition, Brightscope and the Investment Company Institute used their own data to show that the majority of plans with automatic enrollment (59 percent) default participants at a 3 percent contribution rate, 14 percent of plans default participants at 2 percent, and 11 percent of plans have default contribution rates of 4 percent. An additional 12 percent of auto-enrollment plans had default contribution rates of 5 percent or more. Brightscope and Investment Company Institute, *The Brightscope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans* (2014), https://www.ici.org/pdf/ppr_14_dcplan_profile_401k.pdf.

97 Markley Actuarial, "Automatic Enrollment for 401(k) Plans" (2015), http://markleyactuarial.com/automatic-enrollment-for-401k-plans/.

98 California Government Code, Section 100012 (k), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=. California Government Code Section 100034 also would provide that an employer's voluntary contributions would not otherwise affect the employers' obligations to the plan or its participants; "Report and Recommendations of the Oregon Retirement Savings Task Force Created and Tasked Pursuant to H.B. 3436," recommendation 5, page 23.

99 Minnesota Session Laws, Chapter 239, H.F. 2536, 4th engrossment, 88th Legislature (2013-2014), Section 10 (c)(4), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0. Maryland legislation would create an IRA-like arrangement for employee contributions and an ERISA-qualified program for voluntary employer contributions. Maryland Senate Bill 312, 2015 Regular Session, Section 12-207, http://mgaleg.maryland.gov/2015RS/bills/sb/sb0312f.pdf.

100 California Government Code Section 100012(b), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234; Minnesota Session Laws, Chapter 239, H.F. 2536, 4th engrossment, 88th Legislature (2013-2014), Article 2 (10) (a), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0; Oregon task force recommendations, recommendation 8, page 24, https://olis.leg.state.or.us/liz/2013I1/Downloads/CommitteeMeetingDocument/40906.

101 Illinois Public Act 098-1150, Section 45(b) in part states: "The Board may also establish … a conservative protection 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."

102 Konstantin Litovsky, "The Best 401(k) Plan: Participant-Directed or Pooled?" The White Coat Investor (April 2014), http://whitecoatinvestor.com/the-best-401k-plan-pooled-or-participant-directed/.

103 Illinois Public Act 098-1150, Section 30 (e-5), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

104 See, for example, Cynthia Zaleta, "Benchmark DC Plan Fees Now to Lower Your Personal Risk," Xerox Corp. (2015), http://hrinsights.blogs.xerox.com/2015/08/05/benchmark-dc-plan-fees-now-to-lower-your-personal-risk/.

105 California Government Code, Sections 10002 (d), (e) and (f), Section 100010 (9), and Section 100040, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords= ; Maryland Executive Order 01.01.2014.07 (G), http://content.govdelivery.com/attachments/MDGOV/2014/05/12/file_attachments/292196/EO+01.01.2014.07.pdf; Minnesota Session Laws, Chapter 239, H.F. 2536, 4th engrossment, 88th Legislature (2013-2014), article 2, (b) (4), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0; Connecticut Pubic Act No. 14-217, Section 181, http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

106 California Government Code, Section 100008, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB1234.

107 Illinois Public Act 098-1150, Section 5. An IRA is defined as a Roth IRA. http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

108 California Government Code, Section 100014 (b)(4), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

109 Overture Financial LLC, "Final Report to the California Secure Choice Retirement Savings Investment Board" (Feb. 9, 2016), http://www.treasurer.ca.gov/scib/report.pdf.

110 Illinois Public Act 098-1150, Sections 30(a) (2)(6) and 55(c)(5), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

111 U.S. Department of Labor, Employee Benefits Security Administration, proposed rule, "Savings Arrangements Established by States for Non-Governmental Employees," 29 C.F.R. 2510.3-2 (h)(vi) (Nov. 18, 2015), Fed. Reg. v. 80, no. 222, pp. 72006–72014, http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28542&AgencyId=8&DocumentType=1.

112 Matt Fellowes and Katy Willemin, "The Retirement Breach in Defined Contribution Plans," HelloWallet (January 2013), http://info.hellowallet.com/rs/hellowallet/images/HelloWallet_The%20RetirementBreachInDefinedContributionPlans.pdf?mkt_tok=3RkMMJWWfF9wsRonvqTMZKXonjHpfsX56O0sWaOwlMI/0ER3fOvrPUfGjI4ASMZjI%2BSLDwEYGJlv6SgFSLDDMbJn0LgNUhc%3D.

113 Sarah Holden, Jack Vanderhei, and Luis Alanso, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2009," Investment Company Institute Research Perspective, Vol. 16, no. 3 (November 2010), https://www.ici.org/pdf/per16-03.pdf.

114 Jack Vanderhei, Sarah Holden, Luis Alanso, and Steven Bass, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2011," EBRI Issue Brief No. 380 (December 2012), http://www.ebri.org/pdf/briefspdf/EBRI_IB_12-2012_No380.401k-eoy2011.pdf.

115 Alicia H. Munnell and Anthony Webb, "The Impact of Leakages on 401(k)/IRA Assets," Issue in Brief No. 15-2 (Boston, MA: Center for Retirement Research, February 2015). Although analyzing the Vanguard plans gives a comprehensive picture of retirement plan withdrawals, Vanguard plans make up approximately 10 percent of plans and tend to be larger plans with higher-income employees. The authors conclude that a likely result is underreporting of the amount of withdrawals from 401(k) plans.

116 Alicia H. Munnell and Anthony Webb, "The Impact of Leakages on 401(k)/IRA Assets."

117 Vanguard Group Inc., *How America Saves: A Report on Vanguard 2014 Defined Contribution Plan Data* (2015), Table 104, https://institutional.vanguard.com/iam/pdf/HAS15.pdf.

118 Massachusetts General Laws, Chapter 29, Section 64E, https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter60.

119 California Government Code, Sections 10002 (d), 100004, and 100010 (a), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

120 Illinois Public Act 098-1150, Section 16, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

121 California Government Code, Sections 100002 (e) (1) and (f), 100004 (a), 100010 (a), 200012 (f), and 200038 (a), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=. In Illinois, the board must determine the number and duties of staff members needed to administer the program and hire the necessary staff, including a program administrator. The board also has delegated powers as it can, for example, hire service providers, including actuaries and counsel. Illinois Public Act 098-1150, Sections 30(b) and (f), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

122 Illinois Public Act 098-1150, Section 25, http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

123 The audit must include, but is not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other people who are not state employees. The board's report must include a summary of the benefits provided by the program, including the number of enrollees. The reports to participating employers must include the names of each participant employed by the employer and the contributions made during the reporting period by the employer on each employee's behalf. The reports to participants must include contributions and investment income, withdrawals from, and the balances in the account for the reporting period. Illinois Public Act 098-1150, Section 80, http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=SB&DocNum=2758&GAID=12&SessionID=85&LegID=78572. Other state laws that have been enacted considered these subjects in less detail. Although the Oregon law did not address this issue, the task force recommended creating a state board responsible for sponsoring and overseeing the retirement security program it recommended. The Vermont law provides that if a plan is necessary, feasible, and effective, its Public Retirement Plan Study Committee must consider potential models for the management and administration of the plan. Vermont Act No. 179, Section C.108 (c) (1) (B) (2014), http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT179.PDF. The Minnesota law refers to a state-administered plan but does not specify how this will be accomplished. Minnesota Session Laws, Chapter 239, H.F. 2536, 4th engrossment, 88th Legislature (2013-2014), article 2, Sec. 10 (a), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0.

124 See, for example, Illinois Public Act 098-1150, Section 40(c), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150.

125 Illinois Public Act 098-1150, Section 30 (m), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150. The California and Connecticut laws each provide that administrative costs under their plans should be low and that the plan should be self-sustaining. The California law specifies that administrative costs may not exceed 1 percent of the amount in the participant's investment accounts. California Government Code, Sections 100004 (a) and (d), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=. The Connecticut law requires that administrative costs be limited to an annually predetermined percentage of total plan balances, although the law does not state what that percentage should be. Connecticut Public Act No. 14-217, Section 185 (a) (5) and (7), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

126 Minnesota Session Laws, Chapter 239, H.F. 2536, 4th engrossment, 88th Legislature (2013-2014), Section 10 (b) (6), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0. The Vermont law provides that if its study committee finds that a public plan is necessary, feasible, and effective, the committee should study how to build enrollment to a level that employee costs can be lowered. Vermont Act No. 179, Sections C. 108 (c) (1) (B) (iii) (2014), http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT179.PDF.

127 Oregon Laws 2013, Chapter 714, Section 2 (c), https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013orLaw0714.pdf.

128 Connecticut Public Act No. 14-217, Section 185 (a) (23), http://www.cga.ct.gov/2014/ACT/PA/2014PA-00217-R00HB-05597-PA.htm.

129 California Government Code, Sections 100036 and 100013, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=. The board also can purchase insurance to protect its members from personal liability resulting from a member's action or inaction as a member of the board. California Government Code, Sections 100010b (a) b (10), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1234&search_keywords=.

130 Minnesota Session Laws, Chapter 239, H.F., 2536 4th engrossment, 88th Legislature (2013-2014), Article 2, Sections 10 (a), and (b) (4), https://www.revisor.mn.gov/bills/text.php?number=HF2536&version=4&session=ls88&session_year=2014&session_number=0.

131 Maryland Executive Order 01.01.2014.07 does not require a feasibility study. http://content.govdelivery.com/attachments/MDGOV/2014/05/12/file_attachments/292196/EO+01.01.2014.07.pdf.

132 See Page 37 of the report by the U.S. Government Accountability Office, "Federal Action Could Help State Efforts to Expand Private Sector Coverage," GAO-15-556 (September 2015), http://www.gao.gov/products/GAO-15-556.

133 See Investment Company Institute, "The Federal Thrift Savings Plan: Can It Be Duplicated?" (September 2015), https://www.ici.org/pdf/ppr_tsp.pdf.

134 See 26 U.S. Code sections 401 (a), 403 (b) and 408, Cornell University Law School Legal Information Institute, https://www.law.cornell.edu/uscode/text/26/401,https://www.law.cornell.edu/uscode/text/26/403, and https://www.law.cornell.edu/uscode/text/26/408, respectively. Also see IRS, "A Guide to Common Qualified Plan Requirements," http://www.irs.gov/Retirement-Plans/A-Guide-to-Common-Qualified-Plan-Requirements.

135 Ibid. These individuals still must pay Social Security and Medicare taxes on these contributions.

136 See Internal Revenue Service, "IRS Announces 2015 Pension Plan Limitations," IR-2014-99 (Oct. 23, 2014), http://www.irs.gov/uac/Newsroom/IRS-Announces-2015-Pension-Plan-Limitations-1.

137 Internal Revenue Service publication 590-B, *Distributions From Individual Retirement Arrangements (IRAs)*, http://www.irs.gov/pub/irs-pdf/p590b.pdf.

138 26 U.S. Code §408A, http://www.law.cornell.edu/uscode/text/26/408A. Section 408A (d) (2) defines the term "qualified distribution" as used in this context.

139 For example, in 2014, the credit for a married, couple filing jointly was 50 percent of their contribution if their adjusted gross income was less than $36,001; 20 percent of their contribution if their adjusted gross income was between $36,001 and $39,000; and 10 percent of their contribution if their adjusted gross income was between $39,001 and $60,000. For an individual filing as a head of household. the income limits were $27,000 for the 50 percent credit; $27,001 to $29,250 for the 20 percent credit; and $29,251 to $45,000 for the 10 percent credit. Internal Revenue Service, "Retirement Savings Contributions Credit (Saver's Credit)," https://www.irs.gov/Retirement-Plans/Plan-Participant,-Employee/Retirement-Savings-Contributions-Savers-Credit.

140 26 U.S. Code Section 25B, https://www.law.cornell.edu/uscode/text/26/25B.

141 29 U.S. Code Section 1002 (21) (A), https://www.law.cornell.edu/uscode/text/29/1002.

142 These provisions are included in ERISA Title I, 29 U.S. Code, Chapter 18, http://finduslaw.com/employee-retirement-income-security-act-erisa-29-us-code-chapter-18. Also see U.S. Department of Labor, Employee Benefits Security Administration, "Frequently Asked Questions About Retirement Plans and ERISA," http://www.dol.gov/ebsa/faqs/faq_compliance_pension.html.

143 Typically, plan trustees, investment advisers, and plan administrators who can exercise discretion are plan fiduciaries, but attorneys, accountants, and actuaries acting in their professional capacities are not fiduciaries. ERISA section 404 (a) (1), 29 U.S. Code Section 1104; U.S. Department of Labor, Employee Benefits Security Administration, "Meeting Your Fiduciary Responsibilities," 2 (February 2012), https://www.dol.gov/ebsa/pdf/meetingyourfiduciaryresponsibilities.pdf; Jeramie Fortenberry, "What Is a Fiduciary?" (April 14, 2010), http://www.fortenberrylaw.com/fiduciary/.

144 ERISA Section 514, 29 U.S. Code Section 1144, http://www.law.cornell.edu/uscode/text/29/1144. ERISA does not preempt state laws related to employee benefit plans for public employees. 29 U.S. Code section 1003(b)(1), https://www.law.cornell.edu/uscode/text/29/1003.

145 U.S. Department of Labor, 29 C.F.R. 2509.99-1—"Interpretive Bulletin Relating to Payroll Deduction IRAs," 64 C.F.R. 33001 (June 18, 1999), https://www.law.cornell.edu/cfr/text/29/2509.99-1?qt-cfr_tabs=0#qt-cfr_tabs. Also see U.S. Department of Labor and Internal Revenue Service, "Payroll Deduction IRAs for Small Businesses" (October 2014), http://www.dol.gov/ebsa/pdf/PayrollDeductionIRAs.pdf.

146 White House fact sheet, "Opportunity for All: Securing a Dignified Retirement for All Americans" (Jan. 29, 2014), http://www.whitehouse.gov/the-press-office/2014/01/28/fact-sheet-opportunity-all-securing-dignified-retirement-all-americans.

147 U.S. Department of Labor, Employee Benefits Security Administration, "Information Letter on Savings Bonds" (Dec. 15, 2014), http://www.dol.gov/ebsa/regs/ILs/il121514.html.

148 U.S. Department of the Treasury, myRA website, https://myra.gov/.

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