

An Analysis of Options to Increase Retirement Security for New York City Private Sector Workers

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**By The New York City Retirement Security Study Group,
As Commissioned by New York City Comptroller Scott M. Stringer**

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Introduction

The retirement security of American workers has generated considerable attention in recent years from academics, policymakers, the mainstream media, and, increasingly, the general public. A consensus has emerged among key stakeholders that increasing retirement savings is an important goal. Less agreement exists about the best approach to achieving this outcome.

In New York City, approximately three out of every five workers has no access to an employer-based retirement savings plan.¹ To assess the scope of the problem, The New School for Social Research's Schwartz Center for Economic Policy Analysis examined retirement plan eligibility for full- and part-time private sector workers in New York City between the ages of 25 and 64. Of these 2.5 million private sector workers, 1.5 million, or 58 percent, are uncovered and/or ineligible for a 401(k) or other retirement plan through their employers or businesses. Low-wage workers, Hispanic and Asian workers, and those employed by firms with 10 or fewer employees were the most likely to lack access.²

Given both the potential budgetary impacts and the human and societal costs of inadequate financial resources in old age, building retirement savings among uncovered employees is a significant public policy concern.³ Pursuing options for addressing the problem, the Office of the New York City Comptroller sought the input of academic and other experts on how to increase retirement savings for New York City workers currently lacking access to an employer-based plan.

The members of the New York City Retirement Security Study Group (RSSG) included:

- **Scott Evans**, Chief Investment Officer of the New York City pension funds in the Office of the New York City Comptroller, chaired the group;
- **Dr. Teresa Ghilarducci** (The New School for Social Research);
- **Dr. David Laibson** (Harvard University);
- **Dr. Olivia S. Mitchell** (University of Pennsylvania);

¹ Analysis by the Schwartz Center for Economic Policy Analysis at The New School conducted for the Office of the New York City Comptroller.

² According to the Schwartz Center for Economic Policy Analysis, the U.S. Census Bureau's Current Population Survey asks, and the Center uses, the following questions of both employees and the self-employed: "Other than Social Security did any employer or union that you worked for in 2014 have a pension or other type of retirement plan for any of its employees? Were you included in that plan?" The Center includes defined benefit, 401(k), SEP and SIMPLE plans but not payroll deduction IRAs, which have very limited take-up.

³ For example, see "The Continuing Retirement Savings Crisis," the National Institute on Retirement Security, March 2015: http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.

- **Dr. Alicia Munnell** (Boston College);
- **Dr. Joshua Rauh** (Stanford University);
- **Susan Scheer**, Associate Director of Policy in the Office of the New York City Comptroller served as Executive Director for the group;
- **Dr. Stephen P. Zeldes** (Columbia University); and
- **David Morse**, Esq., K&L Gates, provided legal advice and consultation.

Individual biographical information for each study group member appears in the Appendix.

The panel was formed in 2015 and held a number of group meetings throughout a 19-month period. The discussions focused on clarifying the project’s mission, developing a set of principles and goals, and considering essential features and other factors relevant to the issue of increasing retirement savings for New York City workers.

This paper, written by the study group, examines the costs and benefits of various options for satisfying this objective. A separate report authored by the Office of the New York City Comptroller, *The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City*, builds on this knowledge and proposes a specific plan for addressing retirement security in New York City.⁴

⁴ The Office of the New York City Comptroller report, *The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City*, (October 2016), available at: <http://comptroller.nyc.gov/>.

Goals

A set of underlying goals for the proposed options was developed and refined throughout the process. These included:

- Simple plan structure with low fees;
- Broad employee participation in the plan;⁵
- Predictable lifetime income stream;
- Minimal employer administrative and cost burdens;
- Promote competition and choice in order to maximize quality and minimize cost;
- Transparency and objectivity in the selection of private sector operators; and
- No liability for New York City taxpayers.

⁵ “Employee” and “worker” are used interchangeably in this report.

Key Facts and Building Blocks

The RSSG strongly supported the idea that increasing retirement savings is an important goal and that default options are critical determinants of individual saving behavior. Many businesses, particularly small employers, cite a number of impediments to offering a workplace plan, including search costs, reluctance to assume fiduciary responsibility, and administrative burden.⁶ Moreover, some existing plans offered by employers are high cost which may also have the effect of reducing employee retirement savings.⁷ Discussions were guided in part by the following facts and building blocks:

Social Security provides essential basic income protection, especially for low-wage workers. There is some uncertainty, however, about the future solvency of the system and how unfunded Social Security liabilities will be handled in the future.⁸ Accordingly, individual savings may become more significant than ever to help provide financial security in retirement.

Many employees are not currently saving enough for a secure retirement that will start at a reasonable age. While experts disagree about how to assess financial readiness for retirement, and the extent of the retirement savings gap, about half of age 25-64 private sector workers nationally do not have access to a retirement plan through their current employer, and about another 10 to 15 percent have access, but do not participate.⁹ In New York City, the picture is even bleaker, as 58 percent of private sector workers ages 25 to 64 have access to neither a defined-benefit nor a defined-contribution plan.¹⁰

Payroll deduction facilitates contributions. Studies have shown that low- and moderate-income workers are much more likely to save for retirement if they are offered a retirement plan at work.¹¹

⁶ United States Government Accountability Office, "Better Agency Coordination Could Help Small Employers Address Challenges to Plan Sponsorship," March 2012: <http://www.gao.gov/assets/590/589055.pdf>.

⁷ Tony Robbins and Tom Zgainer, "Hidden 401(k) fees can destroy your retirement dreams," July 18, 2016: <http://www.cnbc.com/2016/07/18/hidden-401k-fees-can-destroy-your-retirement-dreams.html>. The Investment Company Institute notes that "401(k) plan participants investing in mutual funds tend to hold lower-cost funds" though a range of fees can be observed across plans by size. See: <https://www.ici.org/pdf/per21-03.pdf>.

⁸ The Social Security Trustees estimate that the combined Social Security Trust Funds will be depleted by 2034, at which point the program will only be able to pay out benefits in the amount that are taken in annually by payroll tax revenue. See: <https://www.ssa.gov/OACT/TRSUM/index.html>.

⁹ An analysis by the Center for Retirement Research at Boston College reviews the available data sources and estimates that about 35 percent of workers may lack access to a workplace retirement plan, and of those that have access, about 50 percent participate in the plan. Alicia H. Munnell and Dina Bleckman, "Is Pension Coverage A Problem In The Private Sector?", Center for Retirement Research at Boston College, April 2014: http://crr.bc.edu/wp-content/uploads/2014/04/IB_14-7-508.pdf.

¹⁰ Analysis by the Schwartz Center for Economic Policy Analysis at The New School conducted for the Office of the New York City Comptroller.

¹¹ A recent White House announcement noted that "fewer than 10 percent of workers without access to a workplace plan contribute to a retirement savings account on their own." <https://www.whitehouse.gov/the-press-office/2016/01/26/fact-sheet-building-21st-century-retirement-system-0>. In addition, a recent Pew Study found that of 104 metropolitan statistical areas with a population over 500,000, none had a take-up rate below 75 percent.

Accordingly federal agencies such as the United States Department of the Treasury (Treasury Department), the Internal Revenue Service (IRS), and the Department of Labor (DOL) have promoted payroll deduction IRAs and 401(k) plans to encourage retirement savings.¹²

The use of auto-enrollment substantially boosts participation in retirement saving plans. Plans with automatic enrollment have become increasingly popular and have been shown to meaningfully improve savings for working Americans by overcoming decision-making inertia.¹³ Initial participation rates can be as high as 85 percent or more. This improvement has been more prevalent among those least likely to participate in retirement plans, particularly low-wage workers.¹⁴

Under the Employee Retirement Income Security Act of 1974 (ERISA), all tax-qualified 401(k), pension, other retirement plans, and certain Individual Retirement Arrangement (IRA) plans offered by employers impose fiduciary duty and/or administrative burdens on employers.¹⁵ Responsibilities under ERISA include disclosure regarding plan features and funding, fiduciary responsibilities for those who manage and control plan assets, and implementation of benefit claims and appeals processes. ERISA also provides important protections for plan enrollees, including the right to sue for benefits and breaches of fiduciary duty. Certain IRA, 401(k), and other retirement plans may also allow, or even require, an employer contribution.

Recent DOL regulations spell out circumstances under which an IRA program with auto-enrollment will be permitted without being subject to ERISA. Under current rules, to avoid being subject to ERISA the plan must be “state-enabled,” meaning that the state must require via legislation that covered employers automatically enroll eligible employees and facilitate forwarding

<http://www.pewtrusts.org/en/research-and-analysis/reports/2016/05/a-look-at-access-to-employer-based-retirement-plans-in-the-nations-metropolitan-areas>.

¹² For example, see: <https://www.irs.gov/pub/irs-pdf/p4587.pdf>. Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510.3-2(a) and (h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>. Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

¹³ For example, see: Brigitte C. Madrian and Dennis F. Shea, “The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior,” May 2000: <http://www.nber.org/papers/w7682.pdf>. Employee Benefit Research Institute, “The Impact of Automatic Enrollment in 401(k) Plans on Future Retirement Accumulations: A Simulation Study Based on Plan Design Modifications of Large Plan Sponsors,” April 2010: https://www.ebri.org/pdf/briefspdf/EBRI_IB_04-2010_No341_Auto-Enroll1.pdf. Brigitte Madrian, Testimony before the U.S. Senate Committee on Finance, September 16, 2014: <http://www.hks.harvard.edu/news-events/news/testimonies/brigitte-madrian-testifies-to-senate-committee-on-finance>. David C. John, “The Case for Auto-Enrollment—Stronger than Ever in 2011,” Benefits Magazine May 2011: <http://www.ifebp.org/inforequest/0159990.pdf>. Shlomo Benartzi and Richard H. Thaler, “Behavioral Economics and the Retirement Savings Crisis,” March 2013: <http://faculty.chicagobooth.edu/Richard.Thaler/research/pdf/Behavioral%20Economics%20and%20the%20Retirement%20Savings%20Crisis.pdf>.

¹⁴ For an analysis of savings rates among income groups in the United States see: <http://www.businessinsider.com/chart-savings-rate-by-income-level-2013-3>.

¹⁵ Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, 88 Stat. 829. The law establishes minimum standards for most voluntarily established pension plans in private industry to provide protection for individuals in these plans. For more information see: <http://www.dol.gov/dol/topic/health-plans/erisa.htm>.

payroll savings deductions to the employee's IRA account.¹⁶ The IRA plan would be overseen by the state or an instrumentality of the state, although asset management and administrative duties could be delegated to private sector firms. The DOL regulations would create a "safe harbor" for this type of publicly-enabled IRA. A proposed DOL regulation would extend the definition to also cover "qualified political subdivisions," such as cities.¹⁷

Although comments submitted to DOL recommended permitting voluntary adoption by employers not subject to the mandate, the final rule continued to provide that employers not covered by the auto-enrollment mandate who elected to voluntarily enroll employees would be viewed as establishing a pension plan, and thus subject to ERISA.¹⁸

Instead of a single default provider selected by the state or its instrumentality, an IRA marketplace could be established, whereby the state or a designated instrumentality would screen private sector firms to provide IRA asset management and administrative duties to employers covered by the auto-enrollment mandate. Under the safe harbor, the DOL regulations require that the employer's participation be mandatory, while the employee's must be voluntary. Therefore, it would most likely be legally permissible if an employee who did not make a selection (and did not opt out) was defaulted into an IRA. Similarly, a "rotating default" IRA, where different vendors would take turns serving as the designated default, would likely be acceptable under the regulation.¹⁹

Recent guidance from the DOL provides that multiple unaffiliated employers may voluntarily join in a pooled 401(k) plan with minimal ERISA liability for employers only if the plan is publicly-enabled.²⁰ DOL's interpretive bulletin explains that a state, or political subdivision, such as a city, can act in the interests of employers and sponsor a Multiple Employer Plan (MEP) because government shares with the contributing employers and their employees a special representational interest in the well-being of its citizens. A pooled 401(k) MEP would put little fiduciary responsibility on the employer, and would allow private sector employers to offer their employees access to a low cost plan. A pooled 401(k) MEP would have higher combined employee

¹⁶ 29 CFR § 2510.3-2(a) and (h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>. The conditions include: establishment of the program pursuant to state law; implementation and administration of the program by the state; state responsibility for investing the employee savings or for selecting investment alternatives from which employees may choose; state responsibility for the security of payroll deductions and employee savings; and state adoption of measures to ensure that employees are notified of their rights under the program.

¹⁷ Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, 81 Fed. Reg. 168 (Aug. 30, 2016), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

¹⁸ For employers not covered by the state mandate, the final rule notes that ERISA would not be triggered in the case of voluntary opt-in by employees if permitted by the state enabling legislation. Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR Part 2510.3-2(a) and (h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

¹⁹ 29 CFR Part 2510.3-2(a) and (h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

²⁰ Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

and employer contribution limits than an IRA. Currently, unaffiliated employers are not eligible to sponsor so-called “Open” MEPs.²¹ To create a level playing field for private entities, legislation to permit private entities to sponsor and administer an Open MEP has been introduced in Congress and has the support of the President.²²

Guaranteed returns and/or income can be valuable to workers, but these also raise concerns about risks for the plan sponsor and how unfunded liability would be handled. A defined-benefit plan with guarantees of income or return, however desirable, can create substantial risk for the plan sponsor. Even for defined contribution plans, if the plan assets were inadequate, the employer or possibly taxpayers could be asked to subsidize the shortfall, although there would likely be no obligation to do so.

Individual retirement saving should take place in large part through low cost investment vehicles. The federal Thrift Savings Plan (TSP) is frequently cited as a model for creating a cost-effective retirement savings plan that serves a large pool of workers.²³ Investments consist of a limited set of commingled, low-fee, passively-managed index funds provided by private sector asset managers who are selected through an auction process.²⁴

Policy Issues and Concerns

Members of the RSSG identified a number of open-ended policy issues and concerns that could impact the feasibility and effectiveness of options to increase the retirement savings of New York City employees who lack access to a workplace retirement plan.

In August 2016, DOL released a proposed regulation expanding its final rule covering state-enabled auto-enrollment IRA programs to include “qualified political subdivisions.”²⁵ We interpret this to mean that New York City could offer such a plan, if the rule becomes final as currently drafted. As currently proposed, a qualified political subdivision is defined based on criteria concerning legal authority, population size, and the absence of a statewide retirement savings plan.

²¹ See: Op. Dep’t. of Labor 2012-04A, <http://www.dol.gov/ebsa/regs/aos/ao2012-04a.html>.

²² The Obama Administration announced its support in January 2016. See: <https://www.whitehouse.gov/blog/2016/01/26/helping-workers-save-retirement-ever-changing-economy>. Questions about which private sector entities should be allowed to sponsor a MEP and who would have fiduciary responsibility have been key Congressional concerns. See: <http://www.thinkadvisor.com/2016/06/28/congress-moves-closer-to-expanding-mep-access?page=2>. Former director of the National Economic Council, Gene Sperling, has proposed that the federal government sponsor a “401(k) for All” with federal matches for low- and moderate-income savers. See: <http://www.nytimes.com/2014/07/23/opinion/a-401-k-for-all.html>. In 2015 a bipartisan group of Senators and Congressmen introduced S. 266 and H.R. 577. See: <https://www.congress.gov/bill/114th-congress/senate-bill/266?q=%7B%22search%22%3A%5B%22s266%22%5D%7D&resultIndex=1> and <https://www.congress.gov/bill/114th-congress/house-bill/557?q=%7B%22search%22%3A%5B%22Retirement+Security+Act+of+2015%22%5D%7D&resultIndex=2>.

²³ For example, see: Rowland Davis, Nayla Kazzi, and David Madland, “The Promise and Peril of a Model 401(k) Plan,” Center for American Progress, April 15, 2010: <https://www.americanprogress.org/issues/economy/news/2010/04/15/7636/the-promise-and-peril-of-a-model-401k-plan/>.

²⁴ For a list of investment options in the TSP see: <https://www.tsp.gov/InvestmentFunds/index.html>.

²⁵ Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, 81 Fed. Reg. 168 (Aug. 30, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-08-30/pdf/2016-20638.pdf>.

DOL has solicited comments on the proposal, including the status of a program established by a qualified political subdivision if the state in which it is contained subsequently opts to create its own plan. The effects of the final rule on New York City will need to be evaluated.²⁶

Federal laws and regulations on retirement policy are evolving and lessons may also be drawn from the implementation experiences of other states and localities. For example, as noted above, pending federal legislation would allow private sector employers without a common business interest to sponsor a MEP, eliminating the exclusive authority to sponsor an Open MEP that is currently granted to states.²⁷ Although no states have started operating any program as yet, several states are actively developing protocols and addressing implementation issues.²⁸ New York State and City government will need to be attuned to this dynamic environment as it develops its decision-making structure and processes.

Similarly, future financial innovation may lead to new, more cost-effective ways for employers to offer retirement plans, and government may interact positively or negatively with such innovation. For example, a number of start-up firms have emerged that leverage technology to provide low-fee investment management and advice.²⁹ Some of them offer low cost traditional and Roth IRAs, as well as 401(k) plans, in some cases with no minimum opening balance. Policymakers will need to monitor such developments closely to determine whether the market is able to develop such products at scale and low cost, which might supplement or supplant the role of a publicly-enabled retirement savings program.³⁰

There may be concerns, particularly among smaller employers, about the extent of their role in helping employees meet the goal of increasing retirement savings. With regard to publicly-enabled auto-enroll IRA programs, the final DOL rule establishes that employer involvement must be limited to ministerial duties, and an employer may not contribute funds to an employee's

²⁶ The proposed rule was published in the Federal Register on August 30, 2016 and requested comments by September 29, 2016. Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, 81 Fed. Reg. 168 (Aug. 30, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-08-30/pdf/2016-20638.pdf>.

²⁷ In 2015 a bipartisan group of Senators and Congressmen introduced S. 266 and H.R. 577. See: <https://www.congress.gov/bill/114th-congress/senate-bill/266?q=%7B%22search%22%3A%5B%22s266%22%5D%7D&resultIndex=1> and <https://www.congress.gov/bill/114th-congress/house-bill/557?q=%7B%22search%22%3A%5B%22Retirement+Security+Act+of+2015%22%5D%7D&resultIndex=2>.

²⁸ For a summary of all state activity since 2012, see: <http://cri.georgetown.edu/states/>.

²⁹ Recent start-ups include Betterment, FutureAdvisor, and Honest Dollar. For example, see: <https://www.nerdwallet.com/blog/investing/best- robo- advisors/>.

³⁰ In its annual survey, the Investment Adviser Association reported growth in both the number of retirement plan participants seeking advice from automated investment advisors and the number of website and mobile applications offering such services. Most advisers report having fewer than 100 clients. With just over 14 million clients, three advisers, each of which specialize in providing automated services and advice to retirement plan participants, accounted for over 39 percent of all reported investment advisor clients, and 62 percent of the total client growth in 2016. The number of advisers reporting that they provide advice exclusively through an interactive website rose by nearly 60 percent to 126. NRS and the Investment Adviser Association, "2016 Evolution Revolution A Profile of the Investment Adviser Profession," August 2016: https://www.investmentadviser.org/eweb/docs/Publications_News/EVREV/evolution_revolution_2016.pdf.

account.³¹ The final rule also provides states with the flexibility to reimburse employers for compliance costs, including the use of tax incentives or credits.³² Regardless of the specific plan adopted, policymakers may wish to consider measures to minimize burdens on employers. This could include making available easy-to-use automated systems—such as through existing payroll services or a central portal—for enrolling employees in retirement savings plans and ensuring the secure transmission of payroll deductions and other ongoing transactions.

Default options are critical determinants of individual saving behavior.

- **Default contribution rates:** As discussed earlier, automatic enrollment has been highly effective in boosting participation in a retirement saving program.³³ Similarly, studies have found that default contribution rates and automatic escalation, in combination with default contribution rates, are effective tools for increasing savings levels.³⁴ Applying a single default savings rate to all participants has drawbacks, however, including the possibilities of under- or over-saving. Indeed, research has shown that most existing default rates—which typically start at three percent—are far below what is needed for a secure retirement.³⁵

Demographically-tailored configurations that take into account additional individual saver characteristics may lead to better retirement savings outcomes. Taking into account macroeconomic factors, such as long- and short-term interest rates and inflation, could also be useful for fine-tuning savings targets and contribution rates.

³¹ These activities include: collecting payroll deductions and remitting them to the program; providing notice to employees and maintaining records of payroll deductions and payment remittance; providing information to the state necessary to the operation of the program; and distributing program information from the state program to employees. Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

³² DOL's Final Rule allowing states to establish savings arrangements for non-governmental employees allows states to "[reimburse] employers for their costs under the payroll deduction savings program" but does not allow states to "provide rewards for employers that incentivize them to participate in state programs in lieu of establishing employee pension benefit plans." See: Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

³³ Shlomo Benartzi and Richard H. Thaler, "Behavioral Economics and the Retirement Savings Crisis," March 2013: <http://faculty.chicagobooth.edu/Richard.Thaler/research/pdf/Behavioral%20Economics%20and%20the%20Retirement%20Savings%20Crisis.pdf>.

³⁴ Richard Thaler and Shlomo Benartzi, "Save More Tomorrow: Using behavioral economics to increase employee saving," August 2001, <http://www.retirementmadesimpler.org/Library/Save%20More%20Tomorrow.pdf>.

³⁵ Testimony of Brigitte Madrian before United States Senate Committee on Health, Education, Labor, and Pensions, January 31, 2013: <http://www.help.senate.gov/imo/media/doc/Madrian.pdf>.

For savers who decline a customized default and do not provide a substitute, a six percent default contribution rate could be a reasonable starting point, based on results from recent planning studies for the California and Connecticut retirement programs.³⁶

Some RSSG members had concerns that a customized approach might be too complex to implement and communicate to participants, especially in a new program, and that a starting default contribution rate of six percent for savers who reject the customized rate might be too high.

- **Default annuitization:** While the group focused primarily on the goal of increasing retirement savings, members also were concerned about how savings might be drawn down during retirement and about providing access to a predictable lifetime income stream. Despite the beneficial longevity insurance that life annuities provide, research and empirical evidence suggest that annuities are not a widely-offered feature in employer-sponsored retirement plans.³⁷ Even when available, individuals planning for retirement tend not to take benefits in the form of annuity—nor do they purchase an annuity on their own outside of the employer-sponsored plan. One recent study found that only about seven percent of workers who retired from a job with a defined contribution plan purchased an annuity with plan assets.³⁸

Behavioral economic studies have also found that individuals may misunderstand how to incorporate annuities into an optimal retirement portfolio.³⁹ One policy approach is to encourage partial annuitization—keeping some savings liquid for emergencies or other uses—to provide some protection against falling into poverty if the retiree exhausts his or her savings prematurely.

³⁶ Anek Belbase, Alicia H. Munnell, Nari Rhee, and Geoffrey T. Sanzenbacher, “State Savings Initiatives: Lessons from California and Connecticut,” Center for Retirement Research at Boston College, March 2016: http://crr.bc.edu/wp-content/uploads/2016/03/IB_16-5.pdf.

³⁷ A 2014 survey by Aon Hewitt, the employee benefits consulting firm, found that just 8 percent of the respondents offered annuity options. Just over 80 percent of firms that did not offer annuities had no plans to do so in the coming year. In addition, direct purchases of annuities by individuals from insurance companies have also been low, constituting only about three percent of funds rolled over from a 401(k) to an IRA. AON Hewitt, “2014 Hot Topics in Retirement: Building a Strategic Focus,” http://www.aon.com/attachments/human-capital-consulting/2014_Hot-Topics-Retirement_Report_vFinal.pdf.

³⁸ <https://www.dol.gov/sites/default/files/ebsa/researchers/analysis/retirement/Deloitte2011.pdf>. For a detailed discussion and review of the literature regarding employee and employer concerns about annuities, see: https://www.brookings.edu/wp-content/uploads/2016/07/Abraham_Harris_paper_rev4.pdf. For example, employers have expressed concerns about potential liability as a fiduciary arising from the selection process—insurance companies offer a vast array of options, and some insurance companies have encountered financial difficulties. Administrative issues arising from changing recordkeepers or an employee changing jobs have also been cited as obstacles.

³⁹ Jeffrey R. Brown, Arie Kapteyn, Erzo F. P. Luttmer, and Olivia S. Mitchell, “Complexity as a Barrier to Annuitization: Do Consumers Know How to Value Annuities?” March 2013: http://gflec.org/wp-content/uploads/2015/08/BKLM_SS-Annuity-paper-2013-03-12-b.pdf. Jeffrey Brown, Arie Kapteyn, and Olivia S. Mitchell. (2016). “Framing and Claiming: How Information Framing Affects Expected Social Security Claiming Behavior.” *Journal of Risk and Insurance*. 83(1): 139–162. Jeffrey Brown, Arie Kapteyn, Erzo Luttmer, and Olivia S. Mitchell. (2016). “Cognitive Constraints on Valuing Annuities.” *Journal of the European Economic Association*. Forthcoming; and Jeffrey Brown, Olivia S. Mitchell, James Poterba, & Mark Warshawsky. 2001. *The Role of Annuity Markets in Financing Retirement*. Cambridge, MA: MIT Press.

Some RSSG members strongly favored a well-designed program with partial default annuitization. In this approach, a portion of the worker's retirement savings would automatically be converted into a stream of lifetime income, unless the retiree opted out. Although the use of behavioral tools could increase participation somewhat, without a default, voluntary take-up is likely to be low.

Other RSSG members felt that default annuitization might not be appropriate for all participants, since many low-wage workers covered by Social Security are already heavily annuitized.⁴⁰ Moreover, means-tested governmental programs (asset and income tests) could detract from the appeal of lifetime income payments for such low-income individuals. Therefore, according to these RSSG members, some low-paid individuals may not need to purchase additional protection.

One concern shared by all RSSG participants is that it will be difficult, especially at the start of any new program, to keep participant fees at a reasonable level relative to plan assets. While this is the inevitable product of fixed plan costs for fund administration (start up, recordkeeping, and account administration) being charged against low initial plan balances, there was a strong feeling that per account fees charged to participants for fund administration must be a reasonable percentage of assets under management. One approach to avoid having hundreds of thousands of small accounts on the books of a recordkeeper would be to take advantage of the federal *myRA* program, as discussed in the following section. This would allow employees to invest without paying any fees until they reach an account limit of \$15,000; at that time they would have a higher opening account balance to roll into a subsequent public or private program. Using this approach, all plan accounts using plan recordkeeping services would exceed \$15,000, thus mitigating the likelihood of high start-up costs.

This is important because high fees and expenses can erode investment returns.⁴¹ Over a lifetime, losing one percent of returns annually could reduce savings by more than a quarter.⁴² Programs like the TSP, which pool contributions from its substantial workforce, are able to command very low investment fees.⁴³

A pooled retirement savings plan offers the benefits of economies of scale. However, past experience with public selection of private investment funds, in some state-run 529 college savings programs and state-run pension systems, has led to concerns. Some members of the RSSG were concerned about the past performance of programs like Oregon's 529 college savings plan in which the government oversaw the selection of investment providers and the

⁴⁰ Some members noted that although low-wage workers who claim Social Security at full retirement age are heavily annuitized, most low-wage workers claim at 62 in which case they receive a lower lifetime benefit/replacement rate. Historically, the full benefit age was 65, and early retirement benefits were first available at age 62, with a permanent reduction to 80 percent of the full benefit amount. Currently, the full benefit age is 66 for people born in 1943-1954, and it will gradually rise to 67 for those born in 1960 or later. See: <https://www.nasi.org/learn/socialsecurity/retirement-age>.

⁴¹ Jennifer Erickson and David Madland, "Fixing the Drain on Retirement Savings," Center for American Progress, April 11, 2014: <https://www.americanprogress.org/issues/economy/report/2014/04/11/87503/fixing-the-drain-on-retirement-savings/>.

⁴² The White House, February 23, 2015: <https://www.whitehouse.gov/the-press-office/2015/02/23/fact-sheet-middle-class-economics-strengthening-retirement-security-crac>.

⁴³ <https://www.tsp.gov/InvestmentFunds/FundsOverview/expenseRatio.html>.

outcome for investors was decidedly negative.⁴⁴ It is likely that there is a tradeoff between the benefits of economies of scale in a publicly-enabled retirement plan, whether a mandatory auto-enrollment IRA or a voluntary MEP, and the potential drawbacks of public selection of investment providers, but the magnitudes of these effects are not well known.

Concerns about the integrity of a publicly-sponsored program could erode public support and undermine the goal of increasing retirement savings. With potentially tens of billions of dollars to be invested and taxpayers' retirement security at stake, program governance is a critical concern. The use of low cost index funds as the investment vehicle could mitigate many of these concerns. In addition, in its final auto-enrollment IRA rule, DOL allows states to delegate authority for implementation and administration 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."⁴⁵

Consideration should be given to creating an independent governance board consisting of members chosen solely for their technical expertise, with no actual or perceived conflicts of interest. This composition could help assure taxpayers that a plan would be operated in the participants' best interests. The board's decision-making would need to be transparent and objective, particularly with regard to the selection of investment managers and advisors. The highly regarded Canadian pension boards could serve as one model for best practices in board structure.⁴⁶ As part of its work, the board could conduct ongoing evaluation of the retirement savings landscape—including the experiences of any states that implement programs—to determine which policies would be appropriate to further the goal of enhancing retirement savings.

⁴⁴ Investors in the Oregon, Pennsylvania and Alabama state-sponsored 529 college savings plans experienced higher-than-average investment losses, and reductions in promised benefits. See: John Kimelman, "Investing; Fund Scandal Puts College Saving Plans On Alert," November 23, 2003: <http://www.nytimes.com/2003/11/23/business/investing-fund-scandal-puts-college-saving-plans-on-alert.html?pagewanted=all> and Kim Clark, "How Safe Is Your College Savings Account?" May 29, 2009: <http://www.usnews.com/education/best-colleges/paying-for-college/savings/articles/2009/05/29/how-safe-is-your-college-savings-account>.

⁴⁵ Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510.3-2(h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

⁴⁶ See, for example: <https://annual.cfainstitute.org/2016/05/10/best-practices-in-pension-fund-management-the-canadian-model/>.

Mechanisms

The RSSG identified four key mechanisms or approaches that could be employed to increase retirement savings among New Yorkers without access to a workplace retirement plan. These are 1) Advice/Support, 2) Marketplace, 3) Subsidies, and 4) Mandates. We discuss each in turn.

1) Advice / Support:

To increase plan sponsorship levels, government could better inform and encourage businesses, particularly small businesses, to engage with existing retirement savings mechanisms rather than implement new programs. Employers would receive advice in selecting plans and support in dealing with ERISA compliance.

Pros

- This approach would constitute the “lightest touch” mechanism.
- By proactively offering assistance, this approach would help employers navigate the complex range of options in the retirement services marketplace, empowering them to take advantage of the better quality existing products.⁴⁷
- In addition, this approach may be less costly for government to implement than other mechanisms, and avoids concerns about having government choose providers.

Cons

- This approach is unlikely to be sufficient by itself to overcome obstacles for employer participation, and it would need to be used in conjunction with other mechanisms.⁴⁸
- The costs, as well as the legal and other impacts on government, need to be studied.
- “Un-targeted take-up,” could be a problem, for example, among employers who would have otherwise paid for such advice/support themselves.

⁴⁷ The New York Small Business Health Options Program (SHOP) is an extension of the State’s Affordable Care Act program, offering a healthcare exchange to small businesses of 100 employees or less. With the goal of reaching small businesses, the SHOP program established the New York’s Small Business Assistance Program (SBAP) which provided grants to 34 small business-serving organizations across the state. SBAP found individual counseling sessions to employers to be the most effective way to increase enrollment and educate business owners about new ACA requirements. See: http://b.3cdn.net/nycss/09b10d3e369e05bda8_q1m6v2skr.pdf.

⁴⁸ Overall, during the two years of the New York’s Small Business Assistance Program (SBAP) health insurance program, it served 28,575 small businesses around the state, through 6,064 individual counseling sessions and presentations to 22,511 people. Out of 2 million small businesses statewide, 10,000 enrolled in the first year of the program. The SBAP found that the opportunity to earn tax credits for providing coverage was especially persuasive. http://b.3cdn.net/nycss/09b10d3e369e05bda8_q1m6v2skr.pdf.

2) Marketplace

A marketplace would give employers access to a selection of retirement plans and providers through a single point-of-entry, such as an online portal or website. Employers could freely access and compare plans, and participation would be voluntary. The employer would establish the retirement arrangement selected from the marketplace.⁴⁹ Nevertheless the city or an entity of its designation would likely need to manage the marketplace by setting minimum standards for participation in the menu of offerings. The marketplace design would likely want to take into account new start-ups that leverage technology to provide low-fee investment management and advice, which could lead to new ways for employers to offer retirement plans.

Pros

- A governing entity could establish minimum design criteria for a particular plan's inclusion in the offered menu (as per the Goals in Section B above), as has been implemented for example through legislation in Washington state and New Jersey.⁵⁰
- By screening plans and limiting the number of plans, the marketplace governing entity could meet the needs of employers for whom search costs are a major hurdle and help employers take advantage of better quality and lower cost products.
- A marketplace preserves employer choice.
- A marketplace may be less costly for government to enable than other mechanisms (although it would require additional costs if a government entity or board were to be established to set and oversee minimum participation guidelines).
- A marketplace could include both ERISA and non-ERISA retirement savings arrangements, while the marketplace itself would not be covered by ERISA.⁵¹
- A marketplace could be mandatory or voluntary.

Cons

- For a 401(k) marketplace, when employers choose their plans from those in the marketplace, the employers would remain responsible for plan selection, administration, costs, and any

⁴⁹ Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

⁵⁰ For an analysis of state action, see: <http://cri.georgetown.edu/states/>.

⁵¹ Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

ERISA responsibilities including fiduciary responsibility. This could potentially be avoided in the IRA marketplace if the employers had no responsibility for the choice of plan.⁵²

- A marketplace could have high marketing costs as financial services firms compete for customers.
- The possible costs and impacts of a marketplace on government remain to be studied, particularly if a government-designated entity were to manage the marketplace by setting standards.
- It would be important to ensure the independence of this entity from conflicts and the potential for self-interest.

3) Subsidies

To increase plan sponsorship levels, government could incentivize businesses, particularly small businesses, to engage with existing retirement savings mechanisms through the use of subsidies.

Pros

- Targeted tax incentives could directly encourage smaller employers to sponsor Simplified Employee Pension (SEP-IRAs) and Savings Incentive Match Plan for Employees (SIMPLE-IRAs) or 401(k)s with default automatic enrollment.⁵³
- A subsidy program could require minimum design criteria for qualification (as per the features in Section B above).

Cons

- Under the safe harbor auto-enrollment IRA, DOL permits reimbursement of expenses but does not allow a subsidy that would pay more than the estimated actual expenses.⁵⁴
- The costs and impacts on government need to be studied.

⁵² Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

⁵³ For background on SEP-IRAs and SIMPLE-IRAs, see: <https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-simple-ira-plans> and <https://www.irs.gov/retirement-plans/plan-sponsor/simplified-employee-pension-plan-sep>.

⁵⁴ DOL's Final Rule allowing states to establish savings arrangements for non-governmental employees allows states to "[reimburse] employers for their costs under the payroll deduction savings program" but does not allow states to "provide rewards for employers that incentivize them to participate in state programs in lieu of establishing employee pension benefit plans." 29 CFR § 2510.3-2(h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

- Employers remain responsible for plan selection, administration, costs, and any ERISA responsibilities.
- “Un-targeted take-up,” could be a problem, for example, among employers who would have set up such plans themselves anyway.

4) Mandates

A mandate would require all employers to offer a retirement plan. Mandates could either require employers to offer a specific retirement plan (such as one sponsored by the city); or a retirement plan from a menu of options, which could be structured to include a publicly-enabled plan or only private options.

Under current law, a government mandate of a 401(k) or other ERISA regulated retirement plan is very likely to be preempted by ERISA. However, as noted above, recent DOL regulations provide a “safe harbor” for a publicly-enabled IRA program with auto-enrollment. Plans operating under the safe harbor would not be subject to ERISA, if certain conditions are satisfied.⁵⁵ In such a case the state must require, via enabling legislation, that covered employers automatically enroll eligible employees and facilitate forwarding payroll savings deductions to employees’ accounts. Currently the only way to avoid the requirement to comply with ERISA coverage would be if a) the mandate is to participate in a state-enabled payroll deduction IRA, and b) employers have no choice about plan features and are not allowed to contribute. This would therefore need to be done either through a publicly-enabled IRA plan, or an IRA marketplace (including possibly screened private options and a public option) in which employers would not have any choice about the provider. The latter could be accomplished by leaving the choice to the individual worker and by defaulting the worker into one of the plans (e.g. the lowest cost plan or a randomly assigned plan) in case an employee refused to make an active selection.

Pros

- Mandates are likely to have the largest impact in terms of improving coverage.
- Under current DOL regulations, a mandate by a state would enable the use of an auto-enrollment IRA without being subject to ERISA.⁵⁶

Cons

- If the mandate included automatic enrollment, then the city would have to satisfy the DOL safe harbor or consider that ERISA compliance requirements might be imposed.

⁵⁵ Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510.3-2(h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

⁵⁶ Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

- If the mandate involved a publicly-enabled option, either as one option of many or as the sole option, it would be necessary to study and confirm that no additional costs for government would be imposed. Specific concerns include that despite the initial desire of the sponsoring public entity to avoid taxpayer liability there is a possibility of lawsuits against the sponsor if investments in a publicly-mandated program perform poorly, or that under political pressure city officials would be inclined to provide financial support to poorly performing funds.
- A mandate takes choice away from and imposes additional costs on employers who do not wish to offer a plan.

Range of Options Considered

The RSSG considered and assessed a range of possible options for increasing retirement savings. These were: 1) *myRA* accounts, 2) private sector-offered IRAs, 3) publicly-enabled IRAs, 4) employer-sponsored 401(k) plans, 5) publicly-sponsored 401(k) Open MEPs, and 6) screened marketplaces (IRAs and/or 401(k)s). In this section we discuss each separately, and later we explore some specific combinations.

1) *myRA*

myRA is a new taxpayer-subsidized federal retirement savings option that allows individual investors to accumulate up to \$15,000 in a Roth IRA.⁵⁷ The *myRA* accounts invest solely in a Treasury retirement savings bond and are subject to all rules that apply to Roth IRAs, including contribution limits and tax rules. If an employer permits it, participants can make automatic direct deposit contributions by payroll deduction, from a checking or savings account or a federal tax refund.

Some strengths and weaknesses of this savings vehicle include:

Pros

- *myRA* provides a simple plan structure with low fees.
- It offers economies of scale due to the large size of the plan.
- The program is underwritten by the federal government and participant fees are federally-subsidized.
- Since *myRA* assets are invested in government bonds, there is no risk of principal loss.
- *myRA* plans require minimal employer administrative and cost burdens.
- There would be no obvious source of liability for New York City taxpayers.
- Designating the *myRA* plan as the retirement savings vehicle would be less costly and burdensome for state and/or local governments to implement, compared to a program of their own.
- Although the maximum amount that an individual can hold in a *myRA* account is \$15,000, the proceeds of a *myRA* can be rolled over into a retail IRA, allowing for additional investment income and savings.

⁵⁷ For detailed information on the *myRA* program, see: <https://myra.gov/>.

Cons

- The ability to make automatic direct deposit contributions by payroll deduction relies on the employer making this available.
- *myRAs* do not currently include the option to buy a predictable lifetime income stream at retirement within the plan.
- Bonds are the only investment vehicle, whereas finance theory tells us that most investors would be better off with a mix of bonds and stocks in their retirement accounts.
- Once a *myRA* account reaches \$15,000 in value or has been held for 30 years, the savings must be rolled over into some other plan. Because the program is new, the exact mechanism by which that will happen is still being developed. Many employees are insufficiently financially literate to review this information thoroughly and make economically beneficial choices.⁵⁸ Advice or support could help alleviate this.
- The proceeds of a *myRA* cannot currently be rolled into a 401(k).
- As a Roth IRA, the *myRA* has phased income limits, although they are substantially above the \$37,000 median income level for New York City private sector workers lacking access to retirement savings.⁵⁹ Roth contributions are currently not allowed once gross income is \$194,000 if married and filing jointly and \$132,000 if single.⁶⁰

2) Private Sector-offered Individual Retirement Arrangements

DOL provides guidance on three employer-arranged plans: i) Payroll deduction IRAs, where funds are directed from the employee's wages to an individually-controlled Individual Retirement Account; ii) SEP-IRAs, where the employer may make contributions to the employee's individual retirement account and to which the employee can make traditional IRA deductible contributions; and iii) SIMPLE-IRAs, where employee contributions are optional, and employers are required to make contributions to the individual retirement account. A SEP or SIMPLE-IRA follows the same investment, distribution and rollover rules as traditional IRAs.⁶¹

⁵⁸ Lusardi, Annamaria and Olivia S. Mitchell (2015). "Financial Literacy and Economic Outcomes: Evidence and Policy Implications. *Journal of Retirement Economics*. 3(1):107-114.

⁵⁹ Analysis by the Schwartz Center for Economic Policy Analysis at The New School conducted for the Office of the New York City Comptroller.

⁶⁰ <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits>.

⁶¹ Information about SEP and SIMPLE IRA plans can be found at: <https://www.irs.gov/retirement-plans/choosing-a-retirement-plan-simple-ira-plan> and <https://www.irs.gov/retirement-plans/choosing-a-retirement-plan-sep>.

Some strengths and weaknesses of these savings vehicles include:

Pros

- All three plans can include auto-enrollment.
- Accounts are owned by the employees.
- IRAs are generally less difficult for employers to set up and maintain than 401(k) plans, and they could be a good alternative for employers seeking to offer a plan without being subject to the compliance and administrative requirements of a 401(k). There is generally no ERISA-related plan filing required. For the SEP, a prototype document can be used to establish the plan.
- The SIMPLE-IRA has higher contribution limits than a standard IRA. SIMPLE IRAs are available to any employee who received at least \$5,000 in compensation during any two preceding calendar years and are reasonably expected to receive at least \$5,000 in compensation during the calendar year.
- SEP IRAs allow for similar employer contributions as a 401(k) (plus employee-elected traditional IRA contributions but not the more generous employee 401(k) contributions). An employer may contribute the lesser of \$53,000 or 25 percent of wages. Special calculations apply for people who are self-employed.
- Traditional IRAs have no income limit.
- Eligible employees can continue to contribute if they change jobs, through the use of a rollover IRA.
- New start-ups that leverage technology to provide low-fee investment management and advice may lead to new ways for employers to offer these retirement plans.

Cons

- If the plan were to implement auto-enrollment, the IRA would be considered an ERISA plan, including full employer fiduciary obligations, unless the plan satisfied the DOL safe harbor.
- Employers would need to research plan offerings to avoid high-cost offerings.
- The SIMPLE-IRA can be used only by employers with fewer than 100 employees.
- A payroll deduction IRA allows only employee contributions, a SEP-IRA allows only employer contributions plus traditional IRA employee-elected contributions, and a SIMPLE-IRA requires an employer contribution and allows an optional employee contribution.
- For the most part, the limits on total IRA contributions (employee plus employer) are lower than for 401(k) plans. Annual employee contributions are currently limited to \$5,500 (or \$6,500 for

individuals age 50 and over) in a payroll deduction IRA, and \$12,500 (or \$15,500 for individuals age 50 and over) in a SIMPLE IRA.⁶²

- Roth IRAs have phased income limits. Roth contributions are not allowed once adjusted gross income reaches \$194,000 if married and filing jointly and \$132,000 if single. SIMPLE and SEP IRAs generally have an income limit of \$265,000.

3) Publicly-enabled IRA

Under DOL rules, state governments (and under a proposed rule qualified political subdivisions such as cities) may establish payroll deduction savings programs to tax-favored individual retirement accounts, with automatic enrollment, for private sector employees.⁶³ The IRA plan would be overseen by the state or an instrumentality of the state, such as a government agency or an independent board, although asset management and administrative duties could be delegated to private sector firms.

Some strengths and weaknesses of this savings vehicle include:

Pros

- This type of plan can incorporate auto-enrollment.
- DOL regulations create a “safe harbor” for publicly-enabled IRA plans. With auto-enrollment, a payroll deduction IRA would not be considered an ERISA plan as long as there was an employer mandate.
- As a mandated program, it would be expected to produce broad employee participation.
- Employer responsibility would be limited to enrollment and facilitating the transfer of payroll contributions.
- Accounts are owned by employees.
- This type of plan can incorporate minimum design criteria for inclusion, as per the Goals section.
- Traditional IRAs have no income limit.
- Eligible employees can continue to contribute if they change jobs.

⁶² <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits>.

⁶³ Information about the DOL rules can be found at: Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

Cons

- The implementing entity, whether a board or a government agency, would select investment providers. It would also be designated through government enabling legislation that established its composition, membership selection process, and other relevant details. The provisions of the enabling legislation and/or the actions of the implementing entity could be subject to influence from special interests.
- There is limited experience to date with workplace payroll deduction IRA plans. In the past, most IRA accounts were established directly by employees and used as rollover vehicles for the proceeds of a 401(k) plan.⁶⁴
- The DOL final rule establishes that voluntary employer contributions are not permitted.
- Contribution limits are lower than for 401(k) plans.
- Roth IRAs have phased income limits, although they are substantially above the \$37,000 median income level for New York City private sector workers lacking access to retirement savings.⁶⁵ Individuals with adjusted gross income of \$194,000 if married and filing jointly and \$132,000 if single cannot contribute to a Roth IRA.
- Despite the initial desire of the sponsoring public entity to avoid taxpayer liability, public officials may come under pressure from voters to provide financial relief to plan participants if the plans perform poorly.
- There is no guarantee that the governing board will be successful in negotiating attractive terms, including low fees, for plan participants.

4) Employer-sponsored 401(k) plans

The term “401(k)” refers to the section of the Federal tax code governing this arrangement.⁶⁶ Under ERISA, an employer cannot be compelled to establish a 401(k) plan.⁶⁷ A single employer generally sponsors a 401(k) retirement savings plan for its employees, and investment choices can be customized.

⁶⁴ Craig Copeland, “2014 Update of the EBRI IRA Database: IRA Balances, Contributions, Rollovers, Withdrawals, and Asset Allocation,” August 2016: https://www.ebri.org/pdf/briefspdf/EBRI_IB_424.Aug16.IRAs.pdf.

⁶⁵ Analysis by the Schwartz Center for Economic Policy Analysis at The New School conducted for the Office of the New York City Comptroller.

⁶⁶ For information about 401(k) plans, see: <https://www.irs.gov/retirement-plans/401k-plans>.

⁶⁷ 29 U.S.C. § 1144(a).

Some strengths and weaknesses of this savings vehicle include:

Pros

- A 401(k) can include auto-enrollment for employees.
- A 401(k) allows both employer and employee contributions, although employees are only able to make contributions if they meet plan eligibility requirements (such as the number of hours worked and length of employment).
- ERISA provides important protections for plan enrollees, including the right to sue for benefits and breaches of fiduciary duty.⁶⁸
- A prototype plan can ease some of the burden on employers while still allowing for a degree of customization. A prototype plan would make use of IRS-approved standard 401(k) plan documents marketed by payroll service providers, banks, insurance companies, and other regulated financial institutions. An individual employer may then adopt the prototype and sponsor a plan for its employees.⁶⁹
- Savings limits are higher under 401(k) plans than many of the other options. The maximum allowable annual employee 401(k) contribution is \$18,000 in 2016 (or \$24,000 for individuals age 50 and over). An employer may be able to contribute up to the lesser of \$53,000 or 25 percent of wages. Employee 401(k) contributions (but not age 50 catch-up contributions) reduce the employer contribution limit.⁷⁰

Cons

- This type of plan cannot include a mandate for auto-enrollment.
- Compared to individual retirement account holders, 401(k) plan sponsors are subject to a larger set of legal requirements designed to protect participating employees. Responsibilities under ERISA include disclosure regarding plan features and funding, fiduciary responsibilities for those who manage and control plan assets, and implementation of benefit claims and appeals processes.
- Additionally, the Internal Revenue Code imposes numerous “nondiscrimination,” distribution, and other rules designed to ensure that the plan does not favor highly compensated employees, which add to employer compliance responsibilities.⁷¹

⁶⁸ 29 U.S.C. § 1132(a).

⁶⁹ <https://www.irs.gov/retirement-plans/types-of-pre-approved-retirement-plans>.

⁷⁰ For example, non-discrimination requirements may limit contribution levels.

⁷¹ 26 U.S.C § 401(a)(4), (k) and (m).

- Employers are responsible for researching, selecting, and customizing their plans, which in turn requires them to judge the suitability of privately-provided offerings.⁷²
- Employees generally cannot contribute additional funds after they leave an employer, although they generally are not required to liquidate holdings over \$5,000 upon departure.⁷³
- Employees may find it difficult to keep track of multiple 401(k) accounts with different employers over a long career. A way to overcome this would be to encourage employees to roll their past holdings into a single plan, either a self-managed IRA or, when allowed, the 401(k) plan of their current employer.

5) Publicly-sponsored 401(k) Open Multiple Employer Plan (MEP)

New DOL guidance clarifies the ability of states (or under proposed rules, qualified political subdivisions) to establish and obtain IRS approval for a multiple employer 401(k) plan.⁷⁴ This would permit employers meeting specified eligibility criteria to participate in the plan on a voluntary basis, with the state, political subdivision, or a designated entity, (such as an independent board) acting as the plan sponsor, the named fiduciary, and plan administrator. The plan would be subject to ERISA and IRS requirements. Contributions would be held in a separate trust.

Some strengths and weaknesses of this savings vehicle include:

Pros

- The plan can allow both employer and employee contributions.
- This plan can include auto-enrollment.
- Voluntary participation preserves employer choice.
- The publicly-enabled MEP offers employers the opportunity to participate in a single plan while shifting virtually all of the legal and compliance issues to the designated plan sponsor, and away from individual employers.

⁷² For instance, the Supreme Court's holding in the case of *Tibble v. Edison International*, 575 U.S. __ (2015), establishes that employers may be held liable for failure to prudently select investments and monitor a plan, see:

<http://www.scotusblog.com/case-files/cases/tibble-v-edison-international/>. Mainstream publications provide information to employees to help assess the quality of their employers' 401(k) plan. For example, see: <http://money.usnews.com/money/retirement/articles/2013/07/01/how-to-tell-if-you-have-a-lousy-401k-plan>.

⁷³ 26 U.S.C § 401(31). A 401(k) plan may contain a provision that balances under \$5,000 must be cashed out. For background on the evolution of the 401(k) as a retirement savings vehicle, see: <https://www.ici.org/pdf/per12-02.pdf>, p.6.

⁷⁴ Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

- Because the public sponsor will vet providers and negotiate terms, the plan enables employers to take advantage of better quality, lower cost products.
- A publicly-enabled plan can provide economies of scale to reduce administrative and other costs.
- Savings limits are higher than some of the other options. The maximum allowable annual elective employee 401(k) contribution is \$18,000 in 2016 (or \$24,000 for individuals age 50 and over).⁷⁵
- This plan can include a Roth 401(k) option.
- The sponsor can establish minimum design criteria for inclusion (as per the Goals section above).
- Employees can transfer an account to a new employer if they participate and continue making contributions.

Cons

- This type of plan is a newly-allowed sponsorship option, and there is no directly comparable implementation experience from which to learn.
- Employers have no ability to customize the offerings for their employees.
- The sponsor is subject to ERISA, although contracted vendors could assume most of the compliance responsibilities and liabilities connected to the plan. It is possible that residual liability could be addressed through insurance purchased by the plan sponsor.
- Under current law, private entities are not permitted to establish an Open MEP of this type, thus tilting the playing field towards public sponsorship.
- Despite the initial desire of the sponsoring public entity to avoid taxpayer liability, public officials may come under pressure from voters to provide financial relief to plan participants if the plans perform poorly.
- There is no guarantee that the governing board would be successful in negotiating attractive terms for plan participants, including low fees.

⁷⁵ <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-401k-and-profit-sharing-plan-contribution-limits>.

6) Marketplaces

Some states, most notably Washington state, have favored the establishment of a plan marketplace to promote “participation in low cost, low-burden retirement savings plans and educate small employers on plan availability.”⁷⁶ The marketplace can rely on a government entity to act as marketplace director and establish criteria for plans meeting minimum standards, although responsibility for administration and/or operations can be contracted-out to private vendors in part or in full.

A marketplace could be established for either 401(k) plans or IRA plans, or both.⁷⁷

A 401(k) marketplace with private options allows for both employee and employer contributions, provides ERISA protections to employees, offer higher savings limits, and can include employee auto-enrollment (shown to increase participation and savings rates).

An IRA marketplace with competitively-selected providers meeting qualification criteria allows for a better quality product and preserves choice. The ability to compare employer-arranged IRA plans to employer-sponsored 401(k) plans could increase interest in IRA plans among employers unwilling to sponsor a 401(k) plan.

For those concerned about the potential drawbacks of public selection of investment providers, the establishment of a marketplace could have beneficial impacts on cost and quality. The pros and cons of marketplaces were previously described in the Mechanisms section of the report.

⁷⁶ <http://www.pensionrights.org/issues/legislation/state-based-retirement-plans-private-sector#Washington>. In the case of Washington state, the menu is to include a SIMPLE IRA, a payroll deduction IRA, and the *myRA*.

⁷⁷ Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

Issues and Features

Tax treatment of contributions and payouts: Traditional versus Roth. The principal difference between a traditional and a Roth IRA or 401(k) lies in the tax treatment. Generally, traditional IRA or 401(k) contributions are deductible when made. Earnings are deferred tax free but all withdrawals (principal and accumulated earnings) are fully taxable. Contributions are after-tax for a Roth IRA or 401(k), and qualified withdrawals, including accumulated earnings, are not subject to taxes.⁷⁸

Roth accounts are generally better for those with a low current marginal tax rate relative to their expected future rate. A traditional account is better for those with a high current marginal tax rate relative to the expected future rate. A Roth allows for higher effective saving limits than a traditional account, and has no required minimum distribution. In addition, the Roth account offers more withdrawal flexibility both before age 59 ½ and after reaching age 70 ½ than a traditional account, where early and late withdrawals may be subject to taxes and a penalty.⁷⁹

There is a tension between the goal of maximizing retirement savings and letting people access funds for current use. The issue of “leakage” raises basic questions about the purpose of helping workers save for retirement.⁸⁰ On the one hand, the greater the restrictions on withdrawing funds before retirement (such as limitations on loans and hardship withdrawals), the more likely workers are to build up retirement savings. On the other hand, some RSSG members noted that low-wage workers may have limited options for obtaining credit at reasonable rates. Therefore, withdrawing funds from a retirement account prior to retirement age could be preferable to borrowing through high-cost credit cards or through payday loans, especially for emergency needs. In its final rule on auto-enrollment IRAs, in response to public comment, DOL revised its original proposal to permit states to impose conditions on employee withdrawals to further the goal of promoting greater retirement savings.⁸¹ If such restrictions were adopted, policymakers would need to give careful consideration to whether other options exist or should be developed to help workers also save for non-retirement expenses.

⁷⁸ A comparison of Roth and Traditional IRAs can be found at: <https://www.irs.gov/retirement-plans/traditional-and-roth-iras>.

⁷⁹ Roth 401(k) balances are not covered by the age 70 ½ minimum distribution rules (except for certain death benefits).

⁸⁰ Alicia H. Munnell and Anthony Webb, “The Impact of Leakages from 401(k)s and IRAs,” Center for Retirement Research at Boston College, February 2015: http://crr.bc.edu/wp-content/uploads/2015/02/wp_2015-2.pdf.

⁸¹ Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

Specific Combinations/Proposals

This section describes possible options to boost retirement savings for New Yorkers currently lacking access to a workplace retirement plan by utilizing the mechanisms and/or the options discussed previously. The discussion considers the strengths and weaknesses of each combination and how these might be addressed.

One key issue relates to the interaction of mandates, auto-enrollment, and ERISA. Under current regulation, city or state governments cannot mandate a 401(k) plan inasmuch as ERISA's preemption rules do not permit states or local governments to mandate participation in a 401(k) plan or other ERISA-governed plan.⁸² The state can, however, mandate a payroll deduction IRA plan that meets the DOL safe harbor, and it is expected that New York City will be able to do so as well.⁸³

If the mandated IRA plan were to include auto-enrollment, then this can trigger ERISA coverage. The only way to avoid ERISA would be to follow the DOL safe harbor, including limiting employers to only a ministerial role.⁸⁴ This would therefore need to be done either through a publicly-enabled IRA plan or an IRA marketplace in which employers would have no choice about the provider (which could in turn be done either with random assignment, or via workers' individual choices).

The group considered the following three sets of proposals that involve varying degrees of private and public sector involvement. In all cases, *myRA* was included as an option.

1. Encourage IRAs without a mandate.
2. Encourage IRA and/or 401(k) marketplaces without a mandate.
3. Mandate auto-enrollment IRAs:
 - a. Public-only options (public IRA + voluntary Open MEP 401(k) plan).
 - b. Private marketplaces only (mandatory IRA + voluntary 401(k) plan).
 - c. Public options and marketplace (combinations of mandatory IRA and voluntary 401(k) plan).

⁸² 29 U.S.C. § 1144(a).

⁸³ The Department of Labor finalized its rulemaking allowing states to provide savings opportunities for non-governmental workers at the same time as it published a proposed rule to expand the safe harbor to political subdivisions of states. The proposed rule was published in the Federal Register on August 30, 2016 and requested comments by September 29, 2016. See: Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, 81 Fed. Reg. 168 (Aug. 30, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-08-30/pdf/2016-20638.pdf>.

⁸⁴ Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, 81 Fed. Reg. 168 (Aug. 30, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-08-30/pdf/2016-20638.pdf>.

We discuss each of these in turn.

1) Encourage employer-arranged IRAs without a mandate.

The strengths and weaknesses of employer-arranged IRAs including payroll deduction IRAs, SEP-IRAs, and SIMPLE-IRAs, as well as *myRA*, have been described previously. These plans offer no obvious source of liability for New York City taxpayers.

We focus here on the advantages and disadvantages of the options being offered without automatic enrollment. If these were offered as a voluntary program for employers and employees, it might be difficult to generate broad employee participation. If auto-enrollment were implemented to boost plan participation, the workplace-based IRA would be considered an ERISA plan, entailing the full panoply of ERISA administrative and fiduciary responsibilities.⁸⁵ The complexity would start to approach that of a 401(k) plan, and the rules governing a 401(k) plan are regarded as more clearly set out and established. Moreover, employer research would still be needed to avoid high-cost offerings, and small employers may lack the leverage of large corporations or a government-enabled entity when negotiating fees with IRA providers. Finally, it is unlikely that a state could require employers to adopt an ERISA plan.

Discussion

For those concerned about the risks associated with government selecting a retirement savings provider, this option preserves maximum flexibility for employers while potentially improving the availability of workplace retirement savings plans. Employer-arranged payroll deduction IRAs are not a commonly available product at present; most IRAs are opened as rollover vehicles.⁸⁶ Voluntary take-up of SEP-IRAs, which may be a good choice for the self-employed, and SIMPLE-IRAs, has also been limited to date, despite the higher savings limits.⁸⁷

Since these arrangements have not been widely adopted by private sector employers thus far, advice or support could help encourage employers to make a payroll deduction, SEP-IRA, or SIMPLE-IRA available. This could also help employers identify better quality, lower cost options available in the private marketplace. If auto-enrollment were included as a feature, advice and support could be made available to help employers comply with ERISA.

Similarly, with advice or support, workers could be encouraged to voluntarily sign up to participate (if there were no auto-enrollment). Such advice could also make it less likely that employees would rollover the account proceeds into a high cost and/or low quality IRA product, or withdraw money

⁸⁵ 29 U.S.C. § 1002(2). Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510.3-2(h), <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

⁸⁶ Craig Copeland, “2014 Update of the EBRI IRA Database: IRA Balances, Contributions, Rollovers, Withdrawals, and Asset Allocation,” August 2016: https://www.ebri.org/pdf/briefspdf/EBRI_IB_424.Aug16.IRAs.pdf.

⁸⁷ According to the Employee Benefit Research Institute, about 6.8 percent of IRAs are SEPs or SIMPLEs. Craig Copeland, “Individual Retirement Account Balances, Contributions, and Rollovers, 2013; With Longitudinal Results 2010-2013: the EBRI IRA Database,” May 2015: http://www.ebri.org/pdf/briefspdf/EBRI_IB_414.May15.IRAs.pdf.

early rather than saving the funds for retirement. They could also be educated about the advantages and disadvantages of investing in equities in preparation for transitioning from *myRA* to the employer-arranged rollover vehicle, assuming that equities are available as an investment option.

The federal Saver's Credit could also help lower-income workers better afford to save, although one of the main assumptions of this study is that New York taxpayers would not take on any liabilities for any private retirement savings plan.⁸⁸ If additional state or local subsidies were to be used as an incentive for either employee and employer participation, or both, the cost implications of this would need to be further examined. Policymakers would need to study what type and amount of subsidies to the employer and/or employee would encourage participation in a voluntary environment, who would provide and pay for the advice/support, and how to ensure that it did not involve undue influence or create legal liability.

In the absence of a mandate, advice or support could encourage employers to make *myRA* available via payroll deduction and provide an employer-arranged IRA. Advice or support could also encourage workers to voluntarily sign up to participate. By taking advantage of *myRA* to save up to \$15,000, workers then would be able to open employer-arranged IRA accounts with higher starting balances, which could reduce fees as a percentage of assets and increase the net rate of return upon rollover into IRAs. Employees could be expected to continue saving for retirement if they had an employer-arranged IRA that allowed for direct rollover of *myRA* proceeds. The exact mechanism by which rollovers would be made from *myRA* to the employer-arranged IRA is still being developed. Coordination with the Treasury Department would also be needed to facilitate enrollment and rollover procedures.

Employers must be willing to facilitate automatic direct deposit payroll contributions to *myRAs*, and they would also need to search for, select, and establish an employer-arranged IRA with one or more providers. If the employer selected a payroll deduction IRA, the savings limits might be too low for some employees.

Summary

For those concerned about the potential drawbacks of public selection of investment providers, employer-arranged IRAs minimize government costs and involvement. Combined with the *myRA* program run by the federal government, these could also be effective as an integrated option. This approach somewhat curtails employer choice by designating *myRA* as the starter saving plan, and the Treasury Department would need to elaborate how *myRA* accounts might be used as an investment option in employer-arranged IRAs. If combined with advice/support and/or subsidies, many of the obstacles that have kept participation rates in employer-arranged IRAs low could be addressed. However, without a mandate, participation rates would likely still be lower than desired, undermining the goal of providing all workers access to a workplace retirement savings plan.

⁸⁸ For background on the Retirement Savings Contribution Credit (Savers Credit), see: <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-savings-contributions-savers-credit>.

2) Encourage marketplaces for IRA plans and/or 401(k) plans without a mandate.

As described above, the addition of an IRA or 401(k) plan marketplace could enhance competition, while at the same time reducing costs. Both would have private providers meeting qualification criteria to offer plans which employers could review and select, thus permitting better quality products while preserving choice. The ability to compare employer-arranged IRA plans to employer-sponsored 401(k) plans could increase interest in IRA plans among employers unwilling to sponsor a 401(k) plan. The *myRA* option would be included in the set of marketplace options.

Strengths

The availability of advice/support could encourage participation, and it could also save employers and employees time and money in selecting and using a 401(k) plan or IRA in a marketplace. A marketplace could also reduce the need for, or complement, the provision of advice/support.

Establishing a marketplace could also be less costly to government than other mechanisms. A 401(k) plan marketplace would allow for both employee and employer contributions, provide ERISA protections to employees, offer higher savings limits, and could include auto-enrollment for employees. The capability to provide automatic enrollment could be a qualification criteria for marketplace 401(k) plans to broaden employee participation. If auto-enrollment were included as a feature in the IRA plans, advice and support could be made available to help employers comply with ERISA.

Weaknesses

A choice of vendors could be confusing to employees, employers, and payroll services. There could be a concern therefore that having multiple IRA and/or 401(k) vendors could drive up costs, potentially significantly. There is also a concern that IRA provider interest may not be sufficient to provide adequate choice and competition in an IRA marketplace.

If the marketplace offerings needed to be screened by the state or an instrumentality of the state (e.g., a city), this would likely imply some costs to the entity. It would be necessary to specify how the costs of establishing and operating the marketplace would need to be borne. It is possible that the entity could be subject to potential liability (e.g., for improper screening of vendors), although contracted vendors would assume most of the compliance responsibilities and liabilities connected to the plan offerings.

The provisions of the enabling legislation and/or the actions of the implementing entity could be subject to undue influence from special interests. In light of this concern, an alternative would be that the implementing entity simply publish a list of preferred plan attributes for employers to use as a guide when selecting a 401(k) plan or IRA provider.

Establishing the marketplace for IRAs and/or 401(k) plans without an employer mandate and without automatic enrollment would not ensure that every New Yorker would have access to a workplace retirement plan.

Discussion

It would be important to provide sufficient educational materials to allow employers to understand and compare the advantages and disadvantages of all the options available in the marketplace to support informed decision-making and to encourage participation. One of the main assumptions of this study is that New York taxpayers not take on any liabilities for any private retirement savings plan, and the issue of using any type of subsidies would require study and evaluation.

To address concerns about integrity, the selection processes for vendors would need to be transparent and objective, with safeguards to ensure against any real or perceived conflicts of interest by those overseeing the process. Screening criteria could be established to eliminate low quality and/or high priced marketplace options.

The use of 401(k) prototype plans and model forms from the IRS for IRAs could reduce some of the administrative and liability burdens for employers sponsoring a plan.

3) Mandate auto-enrollment IRAs with public and/or private options.

The incentives described above may not lead to a sufficient increase in the availability of retirement savings plans in the New York City workforce. Study group members felt that it was important to include a government mandate requiring employers to offer some type of plan, with automatic enrollment.

As described above, mandating IRA coverage has the advantage that it is likely to be rather successful at increasing retirement plan coverage. Nevertheless, it can also impose added burdens on employers, and it introduces legal issues related to ERISA that need to be carefully considered in designing the mandate. The DOL safe harbor discussed previously addresses how a state could create an IRA savings arrangement that is not subject to ERISA.

Under current law, only IRAs can be mandated, not 401(k) plans. However, a firm offering its own 401(k) plan would be exempted from the mandated IRA. It is possible that requiring firms not currently offering either IRA or 401(k) plans to offer IRAs might indirectly serve to increase both IRA *and* 401(k) coverage, as some firms might be incentivized to introduce a 401(k) plan rather than a mandatory IRA. With this in mind, the RSSG considered additional voluntary 401(k) options that could be created, including a public-enabled Open MEP 401(k) plan and a 401(k) marketplace.

The federal Saver's Credit could provide a subsidy to help lower-income workers better afford to save in either an IRA or a 401(k) plan.⁸⁹ Again, given that we posited that New York taxpayers not take on any liabilities for any private retirement savings plan, the use of state or local subsidies as an incentive for both employer and employee participation would need to be studied. Under the

⁸⁹ The Saver's Credit can be taken for employee contributions to a traditional or Roth IRA; a 401(k), SIMPLE IRA, SARSEP, 403(b), 501(c)(18) or governmental 457(b) plan; and for voluntary after-tax employee contributions to an employee's qualified retirement and 403(b) plans. See: <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-savings-contributions-savers-credit>.

safe harbor, if there were a mandate for automatic enrollment with a payroll deduction IRA, employers would be permitted to receive reimbursement for expenses but would not be permitted to receive a subsidy.⁹⁰

The RSSG evaluated in some detail three possible ways to implement an IRA mandate under this heading:

(a) Public options only: Mandate IRA coverage through a publicly-enabled IRA option only; create a voluntary publicly-sponsored Open MEP 401(k) plan;

(b) Private marketplace only: Mandate IRA coverage through a private IRA marketplace; create a voluntary 401(k) plan marketplace with private options only;

(c) Marketplace with both public and private options: Mandate IRA coverage through a public option or a marketplace that could include both private and public options; create a voluntary 401(k) plan marketplace that could include both private and public options.

In what follows, we discuss each in turn.

3(a) Public only: Mandate IRA coverage through a public IRA option only and create a voluntary publicly-sponsored Open MEP 401(k) plan

Under this approach, the state would mandate that firms lacking retirement savings plans would need to enroll in a publicly-enabled IRA (including the *myRA* option). To be exempt from ERISA, the automatic enrollment IRA program must satisfy the DOL regulation safe harbor, including that employer participation must be mandatory while employee participation must be voluntary.⁹¹ A state or city government entity would establish minimum plan design criteria to help employers take advantage of higher quality and lower cost offerings. The state could also create a voluntary Open MEP.⁹² Employers could avoid the IRA mandate by offering any 401(k) plan, including the Open MEP. A publicly-sponsored Open MEP would give employers the opportunity to participate in a single 401(k) plan, while shifting virtually all of the legal and compliance issues to the designated plan sponsor and away from individual employers. This would help address employers' reluctance to sponsor a plan due to fiduciary responsibility and administrative burden.

The Open MEP could provide economies of scale in the form of reduced administrative and other costs. For employers who select this plan, the Open MEP can include automatic enrollment of employees, which has been shown to increase participation and savings rates. An Open MEP

⁹⁰ Further study might assess which subsidies, if any, might encourage the private sector to establish and operate the marketplaces and also encourage employers not already doing so to sponsor a 401(k) plan or select an IRA arrangement in a voluntary environment, and whether these costs would be acceptable to taxpayers.

⁹¹ Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

⁹² Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

would offer some portability to employees who move from one participating employer to another, allowing them to continue contributing to a single 401(k) account.

A governance board could carry insurance to cover liability for itself or employers participating in the Open MEP (though how these costs would be apportioned would need to be determined). DOL has noted that, if structured with an eye towards compliance, the risk of liability could be small.⁹³

3(b) Private marketplace only: Mandate IRA coverage through a private IRA marketplace; create a voluntary 401(k) plan marketplace with private options only

Under this approach, the state would mandate that firms lacking retirement plans must offer an IRA that was available through an IRA marketplace. The employee would select the particular IRA vendor, with a default vendor for employees who do not make a choice but do not opt out of automatic enrollment. A voluntary 401(k) plan marketplace could also be established.

The pros and cons of a marketplace approach for IRAs and/or 401(k) plans were described above. Here we focus on the interaction of mandatory IRA coverage coupled with an IRA marketplace plus a voluntary 401(k) plan marketplace.

As described above, DOL regulations for a mandatory IRA with auto-enrollment require that employers be subject to the mandate while employee participation must be voluntary.⁹⁴ Accordingly, allowing an employee to choose from a menu of screened IRAs would most likely be legally permissible if an employee who did not make a selection (and did not opt out) was defaulted into an IRA. The “default” provider could be set as either the lowest cost provider in the marketplace or a random or rotating assignment from among the different providers.⁹⁵

Further study would be needed to assess whether a sufficient number of private firms would be interested in participating in the IRA marketplace and whether the mechanics of this approach would be feasible.

A potential concern with an IRA marketplace is that employers might need to direct payroll contributions to many different plans. To address this, the city could establish a “pipeline” or connector to assist in this process. Under this arrangement, contributions would be collected from every employer participating in the market through a single payroll deduction mechanism. The funds would then be collected by the city and disbursed to each employee's chosen IRA plans.

⁹³ Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974, 80 Fed. Reg. 222 (Nov. 18, 2015), <http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=28540&AgencyId=8&DocumentType=3>.

⁹⁴ Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR § 2510, <https://www.federalregister.gov/documents/2016/08/30/2016-20639/savings-arrangements-established-by-states-for-non-governmental-employees>.

⁹⁵ In some countries including Mexico and Chile, new hires entering the labor market each year are defaulted into the lowest cost plans that year (named by a government entity), unless they elect some other plan of their own choosing.

While this would have some administrative setup costs that would require further study, it would allow individual choice in the marketplace to be preserved and would ease burdens on employers.

For those concerned about the risks associated with government selecting a retirement savings provider, this option preserves flexibility for employees while improving the availability of and access to workplace retirement savings plans.

3(c) Marketplace with both public and private options: Mandate IRA coverage through a public option or a marketplace that could include both private and public options; create a voluntary 401(k) plan marketplace that could include both private and public options

The RSSG examined combination plans that included a mandated IRA, *myRA*, public IRA option, IRA marketplace, public Open MEP/401(k) option, and a 401(k) plan marketplace.

First, we consider the options for the IRA mandate. The pros and cons of a mandate with either only a private IRA marketplace or only a public IRA option were described above. Here we discuss a possible combination of the two.

Because of the benefits of *myRA* described above, we consider here only options that include *myRA* as a starter plan for participants with no or low IRA balances. For contributions after employees attained the savings cap in the *myRA*, we considered two specific combinations of public and private IRA options. The first is an IRA marketplace that would include both public and private options. The second would rely only on the public option for the IRA. In both cases, there would be a 401(k) plan marketplace and a new publicly-sponsored Open MEP option.

Regarding the first, it would be possible to adopt an IRA marketplace that included as options *both* the public plan and screened private options. As discussed above, this would require that employers have no choice in the plan selected. The mechanisms would be similar to the marketplace-only mandatory IRA option described above (in which the employer made no choice about the plan, and choices were left to employees, with a default mechanism in place for those who did not choose), except the options would also include the public plan.

Additionally, the pros and cons of the 401(k) plan marketplace only and public-option only plans were described above. Here we focus on the combination that includes a 401(k) plan marketplace, which would contain both private sector options as well as a new publicly-sponsored Open MEP option. A 401(k) plan marketplace with public and private options would allow for both employee and employer contributions, provide ERISA protections to employees, offer higher savings limits, and could include auto-enrollment for employees. This is a multi-pronged approach that would provide choice and competition that could lower costs and enhance plan quality. By meeting the needs of employers for whom search costs are a major hurdle and helping them take advantage of better quality, lower cost products, screened prototype 401(k) plans in a marketplace can play an important role in reaching the goal of increasing access to workplace retirement savings plans, particularly for those with higher savings needs, while maintaining employer control and the ability for some customization. A publicly-sponsored Open MEP would provide competition and choice in the 401(k) plan marketplace and has the potential to provide a lower cost, quality product for

employers who want access to a 401(k) plan but are concerned about fiduciary responsibilities and paperwork.

This is a complex option and establishing a publicly-sponsored Open MEP, a marketplace, and a publicly-enabled IRA at the same time could present timing and implementation challenges for the government. Moreover, there would be costs associated with the launch of these products, as well as potentially the longer-term operation and administration costs of all the elements. A phase-in process would be useful.

As noted above, governance issues will be important in any option with marketplaces and/or public options. As also noted above, to avoid the possibility of the government sponsor directing money towards high-fee investment options, and to ensure that the private sector offerings avoid the same concern, all marketplace offerings, both public and private, could be limited to lifecycle funds that invested only in low cost index funds. Fee criteria would need to be developed and monitored to further ensure that expenses remain modest during start-up and beyond.

For those who believe that the key risks can be effectively mitigated as per the discussion above, a hybrid public-private option could help the many New York employees not currently saving for retirement by fostering broad employee participation in the plan and potentially providing access to a lifetime income stream through annuitization. For employers and employees, there are simple plan options with low fees, and for employers, options with minimal administrative and cost burdens. The design is intended to comply with all requirements to avoid any liability for New York taxpayers and to promote competition and choice in order to maximize quality and minimize cost. The selection of private sector operators would need to adhere to the highest standards of transparency and objectivity.

Yet this kind of option also appears problematic for those who believe that the risks of government selecting providers for the public options outweigh the potential benefits of economies of scale, especially if there were not a directly comparable private sector option for each public option.

Conclusions and Recommendations of the New York City Retirement Security Study Group

The primary task of the RSSG was to lay out the key principles and to enumerate the pros and cons of various potential plans. Regarding the specifics of a potential plan for New York City, RSSG members had several areas of agreement and some areas of disagreement. Areas of unanimous agreement were:

- All study group members supported the objectives outlined at the outset of this report, intending to overcome impediments to New York City employers offering every worker access to a workplace retirement savings plan.
- All study group members supported the notion of a mandate requiring that all employers who do not currently offer an IRA or 401(k) plan must offer their workers some type of auto-enrollment IRA, although not necessarily a plan offered by the city. Such plans would permit individual employee opt-outs.
- All study group members supported using *myRA* as a starter plan for individuals with low balances.

The group had some differences of opinion regarding the best set of options to satisfy its mandate. Some RSSG members favored including only publicly-enabled IRA and 401(k) plans. One member was in favor of including in the public plan a fund with a guaranteed minimum return. Some members favored having the city establish a private marketplace for payroll deduction IRAs. Employees would choose their plan from this marketplace, with the possibility that a government-appointed entity free of conflicts would specify maximum cost criteria for inclusion and possibly facilitate the payroll deduction and direction of funds through a pipeline to qualified providers. Some RSSG members supported setting up the IRA and 401(k) marketplaces with only private options and no publicly-enabled ones (other than *myRA*).

The majority of the study group members supported a hybrid solution of a mandatory publicly-enabled IRA combined with a 401(k) plan marketplace and a publicly-sponsored Open MEP 401(k) plan. The Office of the New York City Comptroller has drawn upon this analysis and the input of study group members to author a separate companion report, *The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City*, which is an example of the hybrid solution supported by the majority of the group.⁹⁶

⁹⁶ The Office of the New York City Comptroller report, *The New York City Nest Egg: A Plan for Addressing Retirement Security in New York City*, (October 2016), available at: <http://comptroller.nyc.gov/>.

Appendix: New York City Retirement Security Study Group Members

Scott C. Evans is the Deputy Comptroller for Asset Management and Chief Investment Officer for the \$160 billion New York City Retirement Systems, the fourth-largest public pension fund in the United States providing retirement benefits to over 700,000 members, retirees and their beneficiaries. Previously he was Executive Vice President of TIAA-CREF and President of its Asset Management subsidiaries, which managed nearly \$500 billion in proprietary investment assets. In addition to his investment role with New York City, Mr. Evans currently serves as a member of the investment committees of the William T. Grant Foundation, Member of the Endowment Investment Committee at Tufts University and the Dutch pension fund ABP. Past external roles include trustee of the IFRS Foundation, which sets accounting standards for more than 100 countries, member of the Securities and Exchange Commission's Advisory Committee on Improvement to Financial Reporting, Trustee of Barnard College, Dean's Advisory Council at Northwestern University's Kellogg School of Management and chair of the Finance Committee for the Rockefeller Family Fund. Mr. Evans holds the Chartered Financial Analyst (CFA) designation and is a member of the New York Society of Security Analysts. He earned an M.M. from Northwestern University's Kellogg School of Management and a B.A. in Economics from Tufts University.

Dr. Teresa Ghilarducci is the Director, Schwartz Center for Economic Policy Analysis and the Retirement Equity Lab (LAB) and Professor of Economics, The New School for Social Research. Ghilarducci joined The New School in 2008 after 25 years as a professor of economics at the University of Notre Dame. Her recent book, co-authored with Blackstone's Tony James and titled, *Rescuing Retirement*, charts a visionary, bipartisan, and simple path to solving the retirement crisis. Her previous books include, *How to Retire with Enough Money, When I'm Sixty Four: The Plot Against Pensions and the Plan to Save Them*, and *Labor's Capital: The Economics and Politics of Employer Pensions*, winner of the Association of American Publishers award in 1992. In April 2014, Ghilarducci was appointed Commissioner on the Bipartisan Policy Center's Personal Savings Initiative. She was twice appointed by President Clinton to serve on the Pension Benefit Guaranty Corporation advisory board, serving from 1995- 2002. She has been a member of the General Accounting Office Retirement Policy Advisory Panel since 2002.

Dr. David Laibson is the Robert I. Goldman Professor of Economics at Harvard University. He is also a member of the National Bureau of Economic Research, where he is Research Associate in the Asset Pricing, Economic Fluctuations, and Aging Working Groups. Laibson's research focuses on the topic of behavioral economics, and he leads Harvard University's Foundations of Human Behavior Initiative. Laibson serves on several editorial boards, as well as the boards of the Health and Retirement Study (National Institutes of Health) and the Pension Research Council (Wharton). He serves on Harvard's Pension Investment Committee. He is also serves on the Academic Research Council of the Consumer Financial Protection Bureau. Laibson is a recipient of a Marshall Scholarship. He is a Fellow of the Econometric Society and the American Academy of Arts and Sciences. He is a recipient of the TIAA-CREF Paul A. Samuelson Award for Outstanding Scholarly Writing on Lifelong Financial Security. Laibson holds degrees from Harvard University (AB in

Economics, Summa), the London School of Economic (MSc in Econometrics and Mathematical Economics), and the Massachusetts Institute of Technology (PhD in Economics). He received his PhD in 1994 and has taught at Harvard since then. In recognition of his teaching, he has been awarded Harvard's ØBK Prize and a Harvard College Professorship.

Dr. Olivia S. Mitchell is the International Foundation of Employee Benefit Plans Professor, as well as Professor of Insurance/Risk Management and Business Economics/Policy; Executive Director of the Pension Research Council; and Director of the Boettner Center on Pensions and Retirement Research; all at the Wharton School of the University of Pennsylvania. Concurrently Dr. Mitchell is a Research Associate at the NBER; Independent Director on the Wells Fargo Advantage Fund Trusts Board; Co-Investigator for the Health and Retirement Study at the University of Michigan; Member of the Executive Board for the Michigan Retirement Research Center; and Senior Scholar at the Sim Ki Boon Institute of Singapore Management University. She received the Roger F. Murray First Prize from the Institute for Quantitative Research in Finance; the Fidelity Pyramid Research Institute Award; the Premio Internazionale Dell'Istituto Nazionale Delle Assicurazioni, INA, Accademia Nazionale dei Lincei; and the Paul A. Samuelson Award for Scholarly Writing on Lifelong Financial Security. She has published over 200 books and articles, and she recently served on the Chilean Pension Reform Commission. She received the MA and PhD degrees in Economics from the University of Wisconsin-Madison, and the BA in Economics from Harvard University.

Dr. Alicia Munnell is the Peter F. Drucker Professor of Management Sciences at Boston College's Carroll School of Management. She also serves as the director of the Center for Retirement Research at Boston College. Before joining Boston College in 1997, Alicia Munnell was a member of the President's Council of Economic Advisers (1995-1997) and assistant secretary of the Treasury for economic policy (1993-1995). Previously, she spent 20 years at the Federal Reserve Bank of Boston (1973-1993), where she became senior vice president and director of research in 1984. She has published many articles, authored numerous books, and edited several volumes on tax policy, Social Security, public and private pensions, and productivity. Alicia Munnell was co-founder and first president of the National Academy of Social Insurance and is currently a member of the American Academy of Arts and Sciences, Institute of Medicine, and the Pension Research Council at Wharton. She is a member of the board of The Century Foundation, the National Bureau of Economic Research, and the Pension Rights Center. In 2007, she was awarded the International INA Prize for Insurance Sciences by the Accademia Nazionale dei Lincei in Rome. In 2009, she received the Robert M. Ball Award for Outstanding Achievements in Social Insurance from the National Academy of Social Insurance.

Dr. Joshua Rauh is a Professor of Finance at the Stanford Graduate School of Business, a Senior Fellow at the Hoover Institution, and a Research Associate at the National Bureau of Economic Research (NBER). He formerly taught at the University of Chicago's Booth School of Business (2004–9) and the Kellogg School of Management (2009–12). Professor Rauh studies corporate investment and financial structure, private equity and venture capital, and the financial structure of pension funds and their sponsors. He has published numerous journal articles and was awarded the 2006 Brattle Prize for the outstanding research paper on corporate finance published in the *Journal of Finance* for his paper "Investment and Financing Constraints: Evidence from the Funding of Corporate Pension Plans." In 2011 he won the Smith Breeden Prize for the outstanding research paper on capital markets published in the *Journal of Finance*, for his paper "Public Pension Promises: How Big Are They and What Are They Worth?" coauthored with Robert Novy-Marx. His

other writings include “Earnings Manipulation, Pension Assumptions and Managerial Investment Decisions,” coauthored with Daniel Bergstresser and Mihir Desai, which won the Barclays Global Investor Best Symposium Paper from the European Finance Association and appeared in the Quarterly Journal of Economics. He is an Associate Editor of the Journal of Finance and an editor of the Journal of Pension Economics and Finance and the Review of Corporate Finance Studies.

Susan R. Scheer is the Associate Director for Policy at the Office of the New York City Comptroller, and served as Executive Director of the New York City Retirement Security Study Group. She has over twenty years of management and policy experience in the government and non-profit sectors. She is the author, co-author, or editor of dozens of policy reports focusing on retirement, aging, healthcare, transportation, housing, education, and disability rights. She is the recipient of numerous awards, including the Alfred P. Sloan award given annually to honor outstanding City managers. She is a graduate of Yale University.

Dr. Stephen P. Zeldes is the Benjamin M. Rosen Professor of Economics and Finance at Columbia University’s Graduate School of Business, and currently serves as chair of the school’s Finance and Economics division. In his research, Professor Zeldes has examined a wide range of applied issues in both macroeconomics and household finance, including saving behavior, social security reform, pension policy, retirement account portfolio choices, and annuitization and retirement security. His research has been published in the leading academic journals. Professor Zeldes’ teaching includes courses in macroeconomics, an interdisciplinary course titled “The Psychology and Economics of Consumer Finance,” and a class titled “Entrepreneurship and Innovation in Financial Services.” In 2012, he was a recipient of the Dean’s Award for Teaching Excellence in a Core Course, and in 2013 he received the Dean’s Award for Innovation in the Curriculum. Professor Zeldes is a Research Associate and co-director of the Working Group on Household Finance at the National Bureau of Economic Research. He is also a member of the Advisory Board of the Pension Research Council and a fellow at the TIAA-CREF Institute. Prior to joining the Columbia faculty in 1996, Zeldes was a Professor at the Wharton School of the University of Pennsylvania. He received his PhD in economics from MIT in 1984 and his bachelor’s degree in economics and applied mathematics from Brown University in 1978.

David Morse is an employee benefits partner in the New York office of international law firm K&L Gates LLP. He is actively involved in assisting several states and local government entities in creating turn-key retirement programs for the private sector. He has authored white papers, articles and memos on state initiatives to promote retirement security. He is a frequent speaker on complex compensation and benefits topics, has published nearly one hundred articles on employee benefits, and has served as Editor-In-Chief of the Benefits Law Journal since 2002. Mr. Morse is a Fellow of the American College of Employee Benefits Counsel and holds a B.S. from the University of Vermont, a J.D. from Vanderbilt Law School, and an L.L.M. from New York University. He is admitted to the New York State Bar and is a Certified Public Accountant.

