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Center for Retirement Initiatives

Comparison of Publicly-Sponsored Private Retirement Programs: Plan Design Options and Features[1]

October 31, 2016

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[1] On August 30, 2016, the U.S. Department of Labor (DOL) published a final rule related to Savings Arrangements Established by States for Non-Governmental Employees establishing a new safe harbor for state IRA retirement savings arrangements that would allow for qualifying state programs to be exempt from ERISA. Also on August 30, 2016, DOL published a proposed rule for public comment that would allow state political subdivisions, such as cities, establish similar types of plans. This document compares features of savings arrangements addressed in the DOL final rule with savings arrangements addressed in the DOL's Interpretive Bulletin 2015-02, released on November 18, 2015, regarding certain state laws designed to expand the retirement savings options available to their private sector workers through ERISA-covered retirement plans. This document also includes a federal retirement savings program – the myRA program – launched by President Obama in November 2015.

	Mandatory[2]	Voluntary			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
ERISA Applicability	Not subject to ERISA	Yes ERISA provides a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, automatic enrollment rules, recordkeeping and disclosures requirements, legal accountability provisions, and spousal protections.	Yes	The marketplace arrangement would not itself be an ERISA-covered plan and the arrangements available to employers through the marketplace would include ERISA-covered plans and other non-ERISA savings arrangements.[3]	No[4]

[2] The DOL previously established a 1975 safe harbor (See 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975)) which outlined conditions under which payroll deduction IRAs would not be treated as ERISA plans if provided voluntarily by employers. The conditions include: employers make no contributions, employee participation is "completely voluntary" (meaning decision regarding an employee's enrollment in the program is made by the employee not the employer) and the employer does not endorse the program and acts only as a facilitator of information between the IRA provider and its employees. Limited employer involvement is key to determining the employer has not established or maintained an employeen benefit plan. This original safe harbor is still available to employers that wish to sponsor payroll deduction IRA plans.

[3] 80 Fed. Reg. 71937 (November 18, 2015) -Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974,

[4] DOL responded to the Treasury Department on December 15, 2014 regarding ERISA's applicability to President Obama's myRA program. In the letter, DOL wrote that, given the absence of any employer funding or role in myRA's administration or design, it was the DOL's view that an employer would not be establishing or maintaining an "employee pension benefit plan" under ERISA.

	Mandatory	Voluntary			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
State Role	• The program must be specifically established pursuant to state law.[5] • The state may delegate implementation and administrative authority (rulemaking, contracting with third-party vendors, and investing, etc.) to a board, committee, or other similar governmental agency or instrumentality of the state.[6] • The state must adopt measures to ensure that employees are notified of their rights under the program and create mechanisms for enforcing those rights.[7] • States are not made guarantors or held strictly liable for employers' failures to transmit payroll deductions safely, appropriately, and in a timely fashion. • States are permitted to adopt timing and enforcement provisions specific to their respective programs.	The state, or designated governmental agency or instrumentality would be the plan sponsor under ERISA and the named fiduciary and plan administrator responsible (either directly or through contracted agents) for administering the plan, selecting service providers, communicating with employees, paying benefits, and providing other plan services. Fiduciary responsibilities would be assigned to the parties responsible for administration and management of the state MEP.	In a state administered prototype plan the state or state designee assumes responsibility for ERISA compliance. Thus, the state the state or a designated third-party could assume responsibility for most administrative and asset management functions of an employer's prototype plan. The state could also designate low-cost investment options and a third-party administrative service provider for its prototype plans.[8]	The state would contract with the private sector to establish a program that connects eligible employers with qualifying savings plans available in the private sector market. The state would set standards to determine whether products are suited for small employers, provide good quality, and charge low fees to be included in the marketplace.[9]	No action from the state is required. However, states may consider whether and how they may want to incorporate myRA accounts into their programs.

[5] 29 CFR 2510.3-2(h)(1)(i)
[6] 29 CFR 2510.3-2(h)(1)(ii)
[7] 29 CFR 2510.3-2(h)(1)(iv)
[8] 80 Fed. Reg. 71938 (November 18, 2015)
[9] 80 Fed. Reg. 71937 (November 18, 2015)

	Mandatory	Voluntary			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Employer Participation/ Availability to Other Employers	Mandatory. Any employer not mandated by law to participate that voluntarily chooses to automatically enroll its employees in a state payroll deduction savings program has established an employee benefit plan under ERISA and would not be eligible for the ERISA safe harbor.[10]	Voluntary. Employers meeting the specified eligibility criteria would be permitted to join the plan.[11]	Voluntary. Employers meeting the specified eligibility criteria would be permitted to join the plan.	Voluntary. Employers would be free to use the marketplace and are not required to establish any savings plans for their employees.[12]	Voluntary

[10] 80 Fed. Reg. 59470 (August 30, 2016)
[11] 80 Fed. Reg. 71,938 (November 18, 2015)
[12] 80 Fed. Reg. 71,937 (November 18, 2015)

	Mandatory	Voluntary			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Employer Role	The employer's role must be limited to ministerial activities (collecting payroll deductions and remitting them to the program). Such duties include maintaining records of the payroll deductions and remittance of payments, providing information to the state necessary for the operation of the program and distributing program information from the state program to employees.[13]	Employers would be required to execute a participation agreement. Each employer that chose to participate would not be considered to have established its own ERISA plan. Participating employers would not act as a plan administrator or named fiduciary. Although employers would have a duty to prudently select the arrangement and to monitor its operation, it would generally be limited to enrolling employees in the state plan and forwarding voluntary employee and employer contributions to the plan. Only a single Form 5500 Annual Return/Report would be filed. A MEP may allow participating employers to specify employer and employee contributions and maintain unique plan benefit formulas.[14]	Each employer that adopts the prototype sponsors an ERISA plan for its employees and would assume the same fiduciary obligations associated with sponsorship of any ERISA-covered plan, but the plan documents for a state-administered prototype plan would designate the state or a state designee to perform the functions of a plan's named fiduciary and plan administrator responsible for complying with ERISA. Employers would be able to choose certain features of the plan such as contribution rates.[15]	The employer would establish the savings arrangement, whether it is an ERISA-covered employee benefit plan or a non-ERISA savings arrangement.[16]	Employers would share myRA information with employees, and set up payroll deduction for employees or inform them of other ways that they can fund their accounts. There is no cost to opening an account and employers are not required to administer, contribute to, or match employee contributions.[17]
Employer Contribution	Not permitted[18]	Permitted	Permitted	Permitted	Not permitted

[13] 29 CFR 2510.3-2(h)(1)(vii)
[14] 80 Fed. Reg. 71938 (November 18, 2015)
[15] 80 Fed. Reg. 71938 (November 18, 2015)
[16] 80 Fed. Reg. 71937 (November 18, 2015)
[17] https://myra.gov/employers/
[18] 29 CFR 2510.3-2(h)(1)(viii)

	Mandatory	**Voluntary**			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Structure of Accounts	Payroll deduction IRAs (options include traditional and Roth IRAs)	401(k), defined benefit plan or other tax favored retirement savings program.	401(k) or other tax-favored retirement plans such as a SIMPLE IRA plan.	ERISA and non-ERISA covered plans, such as SIMPLE IRAs, payroll deduction IRAs, Roth IRAs, 401(k)s, etc.	Roth IRA
Contribution Limits[19]	Traditional and Roth IRAs: Cannot be more than $5,500 per year ($6,500 for individuals age 50 and older) or the taxable compensation for the year.[20] Traditional IRA: Contributions may be fully or partly deductible and generally amounts in the account (including earnings and gains) are not taxed until distributed.[21] Required minimum distribution begins on April 1 of the year following the calendar year in which the account holder reaches age 70.5.[22] Roth IRA: Contributions are not deductible and qualified distributions are tax-free. Contributions are permitted after the age of 70.5.[23]	401(k): $18,000 ($24,000 for individuals age 50 and over). Annual additions paid to an individual's account cannot exceed $54,000 (or $60,000 including catch-up contributions) or 100 percent of an individual's compensation, whichever is less.[24] Required minimum distribution begins generally on April 1 following the later of the calendar year in which the account holder either reaches age 70.5 or retires.	SIMPLE IRA: No more than $12,500 a year ($15,500 for individuals age 50 and older)[25] Required minimum distribution for a SIMPLE IRA begins on April 1 of the year following the calendar year in which the account holder reaches age 70.5.[26]	Dependent on product – as noted for 401(k)s, SIMPLE IRAs, payroll deduction IRAs, etc.	Once account reaches $15,000 or has been held for 30 years, it must roll over into a private-sector Roth IRA. Contribution rules for Roth IRAs apply: Cannot be more than $5,500 per year ($6,500 for individuals age 50 and older) or the taxable compensation for the year.[27]

[19] Figures are for tax year 2017.
[20] https://www.irs.gov/retirement-plans/cola-increases-for-dollar-limitations-on-benefits-and-contributions
[21] https://www.irs.gov/retirement-plans/traditional-iras
[22] https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-required-minimum-distributions-rmds
[23] https://www.irs.gov/retirement-plans/roth-iras
[24] https://www.irs.gov/retirement-plans/cola-increases-for-dollar-limitations-on-benefits-and-contributions
[25] Ibid.
[26] https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-required-minimum-distributions-rmds
[27] https://myra.gov/how-it-works/

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	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Income Limits for Contribution[28]	Roth IRA: Contributions are not allowed for adjusted gross income greater than $196,000 a year for those who are married and filing jointly and $133,000 a year for those filing as single.[29] Traditional IRA: There is no income limit. However, tax deductions received on contributions are phased based on income. Participants receive no deductions if earning $119,000 or more for those filing jointly and $72,000 or more for those filing as single.[30]	401(k): None. However, there is a compensation limit which determines how much of an individual's compensation can be accounted for when determining contribution limits. This figure is $265,000 for 2016.[31]	See MEPs for 401(k)s. SIMPLE IRAs have an income limit of $265,000.[32]	Dependent on product	Rules for Roth IRA would apply: Contributions are not allowed for adjusted gross income greater than $196,000 a year for those who are married and filing jointly and $133,000 a year for those filing as single.[29]

[28] Figures are for tax year 2017.
[29] https://www.irs.gov/uac/newsroom/irs-announces-2017-pension-plan-limitations-401k-contribution-limit-remains-unchanged-at-18000-for-2017
[30] Ibid.
[31] https://www.irs.gov/retirement-plans/401k-plans-deferrals-and-matching-when-compensation-exceeds-the-annual-limit
[32] IRS, Publication 560. https://www.irs.gov/pub/irs-pdf/p560.pdf. p. 7

	Mandatory	Voluntary			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Automatic Enrollment	Permitted[33]	Permitted. The Pension Protection Act of 2006 made it clear that automatic enrollment is not prohibited by state wage withholding laws. It also incentivized employers to use automatic enrollment by creating a safe harbor from (i) fiduciary responsibility for the selection of certain default investments (*e.g.*, target date funds) and (ii) tax non-discrimination testing, provided the employer automatically enrolls employees at a certain rate (starting at 3% and escalating to at least 6%) and makes certain matching contributions. Employers are not required to comply with the safe harbors.	Permitted. The Pension Protection Act of 2006 made it clear that automatic enrollment is not prohibited by state wage withholding laws. It also incentivized employers to use automatic enrollment by creating a safe harbor from (i) fiduciary responsibility for the selection of certain default investments (*e.g.*, target date funds) and (ii) tax non-discrimination testing, provided the employer automatically enrolls employees at a certain rate (starting at 3% and escalating to at least 6%) and makes certain matching contributions. Employers are not required to comply with the safe harbors.	Permitted as noted for 401(k) plans pursuant to the Pension Protection Act of 2006 (as described for MEPs and Prototype Plan). However, for a voluntary marketplace, if an employer chooses to use an IRA plan, it could not use auto-enrollment without being considered an employee benefit plan subject to ERISA.	Not permitted

[33] 29 CFR 2510.3-2(h)(2)(iii)

	Mandatory	Voluntary			
	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Employee Opt-out	Permitted. Employees must be given adequate advance notice and have the right to opt out.[34]	Permitted under a plan which allows for automatic enrollment.	Permitted under a plan which allows for automatic enrollment.	Permitted under a plan which allows for automatic enrollment.	Not applicable
Tax & Other Incentives	States may use tax incentives or credits, as long as they ensure that economic incentives are narrowly tailored to reimbursing employers for their costs under the payroll deduction savings programs. States may not provide rewards for employers that incentivizes participation in state programs instead of establishing employee pension benefit plans.[35] Incentives may include disseminating information about the federal Retirement Savings Contributions Credit (Saver's Credit). [36]	Tax credits are permissible to allow small employers to offset part of the costs of starting certain types of retirement plans.[37]	Tax credits are permissible to allow small employers to offset part of the costs of starting certain types of retirement plans.[38]	Tax credits are permissible to allow small employers to offset part of the costs of starting certain types of retirement plans.[39]	Availability of federal Retirement Savings Contribution Credit (Saver's Credit). [36]
Investment Options	Determination is left to the state.[40]	Determination is left to the state, or a designated governmental agency of instrumentality, either directly or through one or more contract agents.[41]	The state could designate low-cost investment options and a third-party administrative service provider for its prototype plans.[42]	Dependent on product	Invests solely in a Treasury retirement savings bond.[43]

[34] Ibid.
[35] 80 Fed. Reg. 59,467 (August 30, 2016)
[36] The Saver's Credit is available for individuals making eligible contributions to an IRA or employer-sponsored retirement plan. It is available to those aged 18 or older, not a full-time student and not claimed as a dependent on another person's return who earn less than $31,000 a year as a single or $62,000 as married filing jointly. Although the Saver's Credit is non-refundable (and so does not provide a refund), it can be combined with another refundable tax credit, such as the Earned Income Tax Credit, to allow a filer to receive a refund.
[37] 80 Fed. Reg. 71,937 (November 18, 2015)
[38] Ibid.
[39] Ibid.
[40] 80 Fed. Reg. 59,467 (August 30, 2016)
[41] 80 Fed. Reg. 71,938 (November 18, 2015)
[42] Ibid.
[43] https://myra.gov/how-it-works/

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	Auto-IRAs	**Multiple Employer Plan ("MEP")/ 401(k)**	**Master and Prototype ("Prototype")**	**Marketplace**	**myRA**
Withdrawal Options	States have the control to establish restrictions on withdrawals from IRAs to limit leakage.[44] Traditional IRA: Any deductible contributions and earnings that are withdrawn or distributed are taxable. An individual under age 59.5 may have to pay an additional 10 percent tax unless the withdrawal qualifies for exceptions. Roth IRA: No penalties or taxes for a qualified distribution (payment or distribution made 5 years after the first contribution and after age 59.5 or due to disability, made to a beneficiary after death, or to meet the requirement of a first home purchase).[45] An individual before age 59.5 may have to pay an additional 10 percent tax unless the withdrawal qualifies for exceptions. [46]	401(k): Hardship withdrawals are allowed for: • Medical expenses for an individual, spouse, or dependents • Purchasing principal residence • Postsecondary education expenses for an individual, spouse, or dependents • Payments to prevent eviction or foreclosure on residence • Funeral expenses • Certain expenses relating to repair to principal residence Generally, withdrawals made before age 59.5 are taxed at 10 percent, unless they fall under exceptions.[47]	Early withdrawals from IRAs (including SIMPLE-IRA) are permissible at any time without a need to show hardship. Early withdrawals will be included in taxable income and may be subject to a 10 percent additional tax for those under the age of 59.5. Exceptions to the 10 percent tax are made for disability, higher education expenses, first time homebuyers, and medical expenses. There is an additional tax of 25 percent if withdrawals are made from a SIMPLE IRA plan within the first two years of participation. [48]	Dependent on product	Roth IRA: No penalties or taxes for a qualified distribution (payment or distribution made 5 years after the first contribution and after age 59.5 or made due to disability, made to a beneficiary after death, or to meet the requirement of a first home purchase). An individual under age 59.5 may have to pay an additional 10 percent tax unless the withdrawal qualifies for exceptions.[46]
	Mandatory	**Voluntary**			

[44] Ibid.
[45] https://www.irs.gov/publications/p590b/ch02.html#en_US_2015_publink1000231061
[46] https://www.irs.gov/retirement-plans/traditional-and-roth-iras
[47] https://www.irs.gov/retirement-plans/plan-participant-employee/401k-resource-guide-plan-participants-general-distribution-rules
[48] https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-iras-distributions-withdrawals

	Auto-IRAs	Multiple Employer Plan ("MEP")/ 401(k)	Master and Prototype ("Prototype")	Marketplace	myRA
Disclosures and Consumer Protection	Does not have the fiduciary consumer protection of ERISA. However, IRS prohibited transaction rules that address conduct between plans and participants and fiduciary issues still apply. States can establish their own regulatory framework for effective disclosures, oversight and risk management.[49]	ERISA's reporting and disclosure requirements, protective standards and remedies would apply.	ERISA's reporting and disclosure requirements, protective standards and remedies would apply.[50]	ERISA's reporting and disclosure requirements, protective standards and remedies would apply to the ERISA plans used by employers through the marketplace.[51]	The program is underwritten by the federal government. Assets are invested in government bonds, so there is no risk of principal loss.[52] See previous information regarding Employer Role for my RAs.

[49] 80 Fed. Reg. 59,469 (August 30, 2016)
[50] 80 Fed. Reg. 71,938 (November 18, 2015)
[51] 80 Fed. Reg. 71,937 (November 18, 2015)
[52] https://myra.gov/how-it-works/

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