



AMERICAN BENEFITS  

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COUNCIL

August 2, 2018

*Delivered via email and U.S. Postal Service*

Ben Kallos  
New York City Council Member  
250 Broadway, Suite 1807  
New York, NY 10007

**Re: Comments on Int. No. 0888-2018, Proposed Mandatory City-run Auto IRA Program**

Dear Council Member Kallos:

On behalf of the American Benefits Council (“Council”), we are writing to provide input on your legislation (Int. No. 0888-2018), which would create a mandatory city-run auto-IRA retirement savings program.

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

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

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

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

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

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

If, after the state-run program is up and running and the New York City Council determines it still makes sense to be move forward with the proposal, we have some suggestions for clarifications to the bill. We would be happy to discuss them with you, but for now we highlight the most important change: ensuring that employers that offer a retirement plan to their workers are fully exempt from the mandate.

For more than 40 years, employers who sponsor a retirement plan have been subject to a single federal statutory and regulatory regime under the Employee Retirement Income Security Act of 1974 ("ERISA"). One of the fundamental reasons that Congress had for passing ERISA was to ensure that employers who voluntarily sponsor a retirement plan are not subject to a multitude of rules under state laws that would inevitably vary from state to state. This framework has enabled the current retirement system to successfully reach millions of employees across the country. It is critical that states and cities do not take action at the expense of employees who are already participants in an ERISA-covered plan. ERISA-covered plans offer several important advantages over state and city auto-IRA programs, including, as noted above, the opportunity for employer contributions, higher contribution limits, and more participant protections.

Every state that has enacted a mandatory auto-IRA program has provided an exemption for employers that already sponsor a retirement plan. Your proposal also has an exemption, but we recommend a critical clarification that will reduce burdens on

employers: provide that an employer is exempt from the mandate if the employer offers a retirement plan, even if that plan does not cover 100% of its employees.<sup>1</sup>

Federal law already stringently regulates the design of retirement plans. The various nondiscrimination rules in the Internal Revenue Code require that the plan's eligibility and benefit rules do not favor highly compensated employees, and such rules impose restrictions on eligibility conditions in the plan. In addition, employers may impose age and service requirements within certain parameters (generally age 21 and one year of credited service). Consistent with these restrictions, it is unusual for a retirement plan to be offered to 100% of all employees at all times, starting from the date of hire. Oftentimes, an employee who is not currently eligible for participation in the plan will become eligible in the future, either due to meeting the plan's service requirement or due to moving from an ineligible position to a position eligible for participation. Although employers are free to impose less restrictive service requirements for eligibility in their qualified plans, federal law does not mandate that they do so.

These federal requirements appropriately balance the administrative costs of enrolling every employee from day one with ensuring a plan adequately covers those employees who need retirement coverage with their job (particularly full-time and long-term employees). Seasonal and part-time employees are often less likely to wish to save for retirement through their job, either because they are younger and saving for other purposes, such as for an emergency fund or education, or because they have a spouse who is saving for retirement. (Such employees can, of course, save in an IRA.)

Your proposal would, unlike any other similar proposal we have seen, require a covered employer to participate in the city-run plan if even a single employee is not eligible for the employer's plan. If your proposal is not clarified, it would create new, more stringent design standards that employers must either meet or be subject to significant monetary penalties and would undermine the value to employees of the employer's plan meeting the already rigorous federal standards. Further, employers with employees enrolled in both the program and the employer's own plan would be forced to take on additional administrative responsibilities to monitor and switch employees between the city-run plan and their own plan.<sup>2</sup> Congress sought to prevent

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<sup>1</sup> An employer is a "covered employer" if it has not offered in the previous two years a retirement plan to its employees that satisfy the definition of "eligible employee." Eligible employee means any employee: (i) who is 18 years of age or older; (ii) who is employed either part-time or full-time for compensation in the city by a covered employer; and (iii) to whom a retirement plan has not been offered by the covered employer in the preceding two years. Accordingly, it appears the proposal in its current form imposes the mandate on an employer that has even a single employee not eligible for the employer's plan.

<sup>2</sup> In addition, many employees will be in the city-run plan for very brief periods, meaning all enrollees will bear the cost of these tiny balances.

this very result through ERISA § 514, which preempts “any and all” state laws that “relate to” an employer-sponsored pension plan.<sup>3</sup>

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We appreciate the opportunity to provide input on the proposal. We would like to schedule a telephone call or meeting to discuss our comments. We will reach out to schedule that discussion. If you have any questions or would like to discuss these comments further, please contact me at 202-289-6700 or by email to [jjacobson@abcstaff.org](mailto:jjacobson@abcstaff.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson  
Senior Counsel, Retirement Policy  
American Benefits Council

cc: Letitia James, Public Advocate of New York City

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<sup>3</sup> Clarifying that all employers that sponsor a retirement plan are exempt from the mandate would therefore ensure that the proposal is consistent with, and not preempted by, federal law.