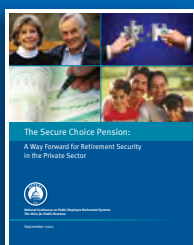




Secure Choice 2.0:



States blazing a path to
retirement security for all



National Conference on
Public Employee Retirement Systems

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About the Editor

Hank Kim is executive director and counsel for National Conference on Public Employee Retirement Systems (NCPERS). Kim directs the day-to-day operation of the largest public pension trade association in the United States. His responsibilities include strategic planning for NCPERS, promoting retirement security for all workers through access to defined benefit pension plans, and the expansion of NCPERS' role in the continuing debate on health care. He also authored the 2011 report, "The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector."

NCPERS is the largest trade association for public sector pension funds, representing more than 500 funds throughout the United States and Canada. It is a unique non-profit network of public trustees, administrators, public officials and investment professionals who collectively manage more than \$3 trillion in pension assets. Founded in 1941, NCPERS is the principal trade association working to promote and protect pensions by focusing on advocacy, research, and education for the benefit of public sector pension stakeholders.

Acknowledgements

Many people had a hand in developing this report, sharing their insights and experience to help memorialize six years of historical events and provide diverse perspectives.

David Morse of K&L Gates, Cathie Eitelberg and Leon F. "Rocky" Joyner Jr. of The Segal Company, and Michael Kahn of NCPERS drew on their long involvement with the Secure Choice concept to help shape this paper and guide its development. Legislators and federal and state officials gave generously of their time, including Phyllis Borzi, Michael Frerichs, Kevin de León, Kevin Lembo, Lisa Massena, and Katie Selenski. Researchers from academia and think tanks, including Angela Antonelli, Nari Rhee, John Scott, and Jeremy Smith provided valuable perspective. Sarah Mysiewicz Gill of AARP framed the financial challenges facing current and future retirees. Significant contributions were made by Debra Cope, Nick Peters, and Denise Adams. Amanda Rok of NCPERS assisted with interviews and kept us all on track.

Finally, the Officers, Executive Board and staff of NCPERS provided constant support and encouragement. Without the vision and commitment of our leadership, we could not have come so far in only six years.

Secure Choice 2.0: States Blazing a Path to Retirement Security for All

Executive Summary

Governments and employers alike have long been concerned with ensuring that an aging population has a solid financial foothold in retirement. Today, the United States faces the urgent task of helping Americans bolster their retirement savings. At least half of Americans are ill prepared financially for what should be their golden years, with a current shortfall in retirement savings that has been estimated at between \$4 trillion¹ and \$14 trillion.² These daunting figures cast a long shadow over the future of many of today's workers and have significant implications for the states and localities where they live. The prospect of millions of hard-working Americans' retiring into poverty is unacceptable. Sadly, it is also very real.

The Secure Choice Pension (SCP) model, unveiled in 2011 in a white paper by the National Conference on Public Employee Retirement Systems,³ has inspired a focused and productive debate about approaches to closing the retirement income gap. In the absence of federal initiatives to promote retirement savings, states have filled an unmet need by taking the Secure Choice model and running with it. Honoring their traditional role as laboratories of change, the states have developed a host of public-private partnerships designed to help private-sector workers boost their savings through payroll deductions. Though these initiatives have come under

attack, the states are forging ahead. And they have strong allies. For AARP, the advocacy organization for nearly 38 million Americans over age 50, fighting for the success of Secure Choice "has become a huge priority," said Sarah Mysiewicz Gill, senior legislative representative at AARP.⁴

Secure Choice is a direct outgrowth of persistent and converging trends that are reshaping the retirement landscape—trends that include the diminution of traditional defined-benefit pension plans and the failed promise, for many Americans, of the much-vaunted 401(k) plan. This paper revisits these and other forces that have given rise to a wave of state initiatives to help Americans retire with dignity. It examines what has happened since the earlier white paper was issued, takes stock of developments at the state level, and looks at the challenges ahead.

There is no question that the states have a long and respected history of engagement in fostering retirement security, nor any doubt that over the past century Americans have embraced a governmental role in providing a steady income for the elderly in retirement. Between 1915 and 1933, 28 states led the way in adopting old-age pension laws, creating a safety net that ultimately formed the foundation of the Social Security Act of 1935.⁵ When the Social Security Act was introduced, President



Franklin D. Roosevelt's labor secretary, Frances Perkins, cited a compelling social and economic case for providing aging Americans with "a decent and dignified subsistence in their declining years."⁶

The workplace, too, has been part of the solution, and for even longer — 160 years, to be precise. Public pensions have provided a timeless model for retirement savings since the first such plan was

established in 1857 for New York City police officers. Private-sector pensions followed in 1875, when American Express became the first corporate employer to provide the benefit.⁷

The only real question is whether and how local, state, and federal governments; workers; and private employers will come together to fulfill the promise of retirement security for all.

¹ Jack VanDerhei, *Retirement Savings Shortfalls: Evidence from EBRI's Retirement Security Projection Model*[®], EBRI Issue Brief No. 410 (Washington, DC: Employee Benefit Research Institute, February 2015), https://www.ebri.org/pdfl/briefspdf/EBRI_IB_410_Feb15_RS-Shrtfls.pdf.

² Nari Rhee, *The Retirement Income Crisis: Is It Worse Than We Think?* (Washington, DC: National Institute on Retirement Security, 2013), http://www.nirsonline.org/storage/nirs/documents/Retirement%20Savings%20Crisis/retirementsavingscrisis_final.pdf.

³ Hank H. Kim, *The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector* (Washington, DC: National Conference on Public Employee Retirement Systems, 2011), http://www.ncpers.org/files/2011_scp_white_paper_final.pdf.

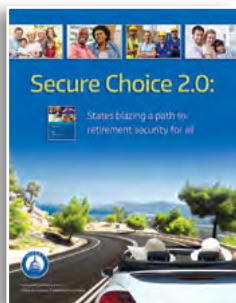
⁴ Sarah Mysiewicz Gill, telephone interview with author, May 15, 2017.

⁵ Abe Bortz, "Historical Development of the Social Security Act" (Special Study #1, Social Security Administration Research Notes & Special Studies by the Historian's Office, early 1970s), <https://www.ssa.gov/history/bortz.html>.

⁶ Frances Perkins, "Social Insurance for U.S.," radio address, NBC network, February 25, 1935, <http://gos.sbc.edu/p/perkins.html>.

⁷ Tyler Bond, "160 Years of Pensions in the United States," National Public Pension Coalition, April 29, 2017, <https://protectpensions.org/2017/04/29/public-pensions-early-history/>.

About This Report



Who could have predicted, back in 2011 when NCPERS started down this road, the progress we have made? Now, with the 2016 election bringing a significant political shift as well as a new Administration and Congress, the challenge is to preserve this progress made by the states and the Secure Choice movement.

It's been nearly six years since NCPERS published the SCP white paper in September 2011. In some ways, the white paper helped galvanize disparate efforts in a number of states that had been frustrated with the federal government's lack of leadership on retirement policy. It was meant to spark discussion about the possibility of state-facilitated programs and inspire follow-through action. Secure Choice provided the intellectual capital, modeling, and rigorous stress testing of a concept that few people thought could gain traction.

Much has happened since September 2011 in the field of state-facilitated retirement savings. In September 2012, California passed its seminal Secure Choice Retirement Savings Trust Act, which established a board and authorized a comprehensive feasibility study. Soon thereafter, Connecticut, Illinois, Maryland, New Jersey, Oregon, and Washington passed enabling legislation to create their states' retirement savings programs.

These dynamic states are the vanguard of a movement. A total of 40 states have taken some legislative steps to establish a state-facilitated retirement savings program since 2012, according to the Center on Retirement Initiatives at Georgetown University. Carrying titles such as Secure Choice, OregonSaves, or some other name, these efforts show that state policymakers recognize that retirement insecurity is at a crisis level in America and that states are in a prime position to positively affect and eliminate this approaching catastrophe.

As we approach the five-year anniversary of state action on retirement savings, we feel it is an appropriate time to update our SCP white paper. For this edition, we wanted to accomplish the following:

- Reflect on the activities that have transpired since the publication of the original white paper.
- Provide a broad and inclusive point of view from those who are active in furthering state-facilitated retirement savings.
- Provide best practices and model legislation.
- Provide a peek at what might be the next stage of evolution for state-facilitated retirement savings.

In sum, we want to celebrate what we've collectively achieved, but also we hope this edition, like the original work, will inspire the next cohort of state leaders to innovate and establish the ensuing evolution of state-facilitated retirement programs.

Hank Kim, Esq.
Executive Director and Counsel

Part 1: The Road to Secure Choice: How We Got Here

How Much Is Enough?

“As a general rule, according to Fidelity Investments¹³, workers should have saved 100 percent of their annual salary by age 30. By 50, the figure jumps to six times annual salary. At 67, the age at which most baby boomers qualify for full Social Security, a secure retirement nest egg should hold 10 times annual salary. In other words, an employee making \$100,000 per year should have \$1 million saved for retirement.”

– Michael Kahn, NCPERS Director of Research



The Retirement Shortfall

Ask Americans what their worries are for the future, and deep anxiety over retirement security quickly surfaces. The ability to retire with a predictable income has been high on the list of concerns in survey after survey, year after year, vying mainly with war and terrorism for mindshare. This financial anxiety is bipartisan, with Democrats and Republicans registering barely any difference in their concern about their ability to achieve a secure retirement.⁸

Unfortunately, these fears are well grounded. Americans are saving far too little for retirement, if they are saving at all. According to the Employee Benefit Research Institute's 2016 Retirement Confidence Survey, only 21 percent of workers were very confident that they will have enough money to live comfortably throughout their retirement years.⁹

The three-legged stool of retirement security — Social Security, employer-provided pensions and retirement benefits, and personal savings and investments — has grown rickety over the years. The Social Security system faces the constant threat of shortfalls and benefit reductions. Employers are less likely than ever to offer a pension, or even a helping hand — 55 million Americans work for an employer that offers no retirement savings or pension whatsoever.¹⁰ And even in the era of the vaunted 401(k) plan, the average nest egg of working-age families — those ages 32 to 61 — is \$95,776, barely enough to generate \$300 a month in income. The median for the same group is a truly dismal \$5,000.¹¹

"There is a real lack of understanding of the severity of the problem," said Angela Antonelli, executive director of

the Center for Retirement Initiatives at Georgetown University's McCourt School of Public Policy. She also noted that in the aftermath of the 2016 election, some debate and conflict about the proper role of government in any solution should be expected, making the case for state-facilitated programs more challenging.¹²

Estimates of the size of the gap between retirement income and expenses vary widely, because so many variables must be considered, among them longevity trends, the future of Social Security, and stock market performance. However, credible arguments have been made for a shortfall of between \$4 trillion and \$14 trillion over the course of retirement for people now ages 25 to 65.¹⁴

Employers have traditionally provided retirement benefits as a way to attract and retain the workers needed to deliver goods and services. But the past 40 years has seen dramatic changes in the shape and structure of retirement savings in America. Corporate pension plans, where they existed at all, have gradually gone the way of vinyl records, Kodachrome film, and landlines. Just 13 percent of private-sector workers have a traditional pension plan, down from 38 percent in 1979.¹⁵ Public pension plans remain robust as a whole but are under constant, politically motivated attack and pressure, primarily because of the failure of state and local governments to honor their funding commitments. And 401(k) plans, which were held out as a superior alternative to traditional defined-benefit pensions, have failed to deliver the desired benefits. "The great lie is that the 401(k) was capable of replacing the old system of pensions," Gerald Facciani, former head of the American Society of

Experts estimate the gap between retirement income and expenses at \$4 trillion to \$14 trillion for today's adults.

Pension Actuaries, told *The Wall Street Journal*. "It was oversold."¹⁶

Workers who do manage to save for retirement typically utilize workplace mechanisms, including pension and 401(k) plans. There is ample evidence that saving via payroll deduction is the best way to ensure high and steady participation levels in retirement programs. However, there is a limit to how effective workplace benefits can be when they are unavailable to fully half of employed Americans.

A Secure Choice for American Workers

Against this backdrop of rising anxiety, workplace change, and generational shifts, the Secure Choice movement took shape. In the early years of the new millennium, policymakers and stakeholders from across the political spectrum considered how to give Americans greater confidence in their financial future. While millions of Americans participated in workplace plans, including public and private pensions and tax-deferred savings plans such as 401(k)s, millions did not. And even among those participating, average savings rates were dangerously short of the amounts needed for a secure future. The debate quickly homed in on the workplace, particularly the small businesses that drive local economies and power innovation. The focus was on a new concept based on the individual retirement account (IRA) and called the auto-IRA. In 2006, *The New York Times* wrote the following:

"The best idea yet developed for making savings universal is an IRA that is funded with automatic direct deposits from a paycheck. The brainchild of researchers from the

Heritage Foundation and the Brookings Institution, the automatic IRA would use a no-frills design and economies of scale to overcome the problem of high fees on small accounts. Congress should pass legislation to establish auto-IRAs, and the president should sign it."¹⁷

Why, people asked, did so few employers offer retirement savings programs, and how could more of them do so? The concept of an IRA with an automatic enrollment feature – the time-tested method of increasing participation in retirement plans – had been discussed since the 1990s and was emerging as an appealing approach. The idea contained the seeds of what would become Secure Choice. By 2012, Secure Choice was gaining currency as the most promising method to help workers save. By 2016, interest in the approach had snowballed into a movement.

By the time of the global financial crisis of 2007–8, which hit many Americans hard, especially those approaching retirement, the looming retirement savings crisis was suddenly more real. Policymakers and economists, who had been sounding the klaxon about insufficient retirement savings for at least two decades, cranked up the volume. Yet despite repeated bipartisan initiatives to raise the issue of economic security in retirement, Congress did not act.

With the arrival of the Obama Administration in 2009, hopes were trained on the auto-IRA, the proposal put forth earlier by Heritage Foundation and Brookings Institution researchers. President Obama devoted his Labor Day 2009 weekly radio address to retirement security, outlining "commonsense changes

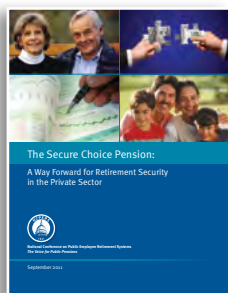
that will help families put away money for the future.” The first item on his list was the auto-IRA, which he had outlined in his first budget proposal. “We know that automatic enrollment has made a big difference in participation rates by making it simpler for workers to save, and that’s why we’re going to expand it to more people,” President Obama emphasized.¹⁸

Yet in Congress, the auto-IRA and other measures to stimulate retirement savings were introduced and debated enthusiastically, but failed to advance (see sidebar). Frustration with government inaction was building, along with the ever-increasing predictions about the retirement savings shortfall.

In September 2011, NCPERS laid out the rationale for a state-facilitated approach in a groundbreaking white paper, *The Secure Choice Pension: A Way Forward for Retirement Security in the Private Sector*. Summarizing the goal, NCPERS Executive Director and Counsel Hank Kim wrote, “American private-sector workers need a new choice that provides a secure yet flexible retirement program.”²⁰

The SCP white paper called for public-private partnerships to provide retirement security for American workers, particularly those who worked for small businesses and lacked access to a defined-benefit pension. The proposal drew on the documented performance and efficiencies of public-sector pension management and

extended them to those in the private sector. The concept was that the states – individually, or possibly in groups – would enact legislation to establish a state or



Congressional Inertia

During the 2008 election, presidential candidates John McCain and Barack Obama each endorsed creating the auto-IRA, an individual retirement account for employees of small businesses. The auto-IRA account was part of every federal budget from FY 2010 to FY 2017 but failed to gain congressional support. (The Obama Treasury Department did implement a simplified version, the myRA retirement savings starter account, in 2015.)

The authors of the auto-IRA were two esteemed retirement experts from opposite ends of the political spectrum – J. Mark Iwry, an attorney who served in the Obama and Clinton Administration Treasury Departments, and David C. John, who was with the conservative Heritage Foundation when he and Iwry designed the auto-IRA.

Iwry told The New York Times in May 2017 that when he began looking at the auto-IRA, he thought, “Hey, this is kind of cool. This is something for which people might be able to cross the ideological chasm.”¹⁹ But the bipartisan desire for a federal solution to retirement woes has yet to overcome congressional inertia.

regional SCP program. SCPs would be multiple-employer hybrid defined-benefit pension plans, which would guarantee lifetime retirement income immune to stock market vagaries or sudden economic downturns, at no cost to taxpayers. The NCPERS proposal would largely eliminate financial and administrative burdens for private-sector employers that want to create at-work retirement savings options.

Importantly, Secure Choice was not designed to replace existing pension plans in the public or private sector. Rather, it was intended to be a basic program for a private-sector workforce that currently does not have the benefit of a pension plan. The underlying principles of the proposal were lifetime retirement security for all participants; flexibility and portability given the increasingly mobile workforce; and managed and shared risk with protections for employers, employees, taxpayers, and the plan.

States and localities were intrigued. Their overarching obligation was to protect the economic security of their residents, and encouraging retirement savings was a way to accomplish that goal. They understood intuitively how inadequate retirement savings could place stress on social welfare programs and reduce the tax base.

The NCPERS report unleashed a flurry of interest and activity. By 2012, Secure Choice was gaining currency as the most promising method to help workers save. By 2016, interest in the approach had snowballed into a movement.

Other nations, meanwhile, were forging ahead with solutions to their own retirement crises. In 2012, for example, the United Kingdom began phasing in a

nationwide retirement savings initiative that requires all employers to automatically enroll their workers into a retirement savings plan. The program, which will be fully implemented in 2018, also requires employer contributions, a condition that is not even under consideration in the most-discussed U.S. initiatives.

The States Take the Reins

Since 2012, the Secure Choice model has been reviewed, analyzed, and debated in 40 states and by several city governments. On January 4, 2015, Illinois became the first state in the union to fully enact legislation requiring private-sector employers to offer their workers retirement benefits. Program enrollment is slated to begin on a pilot basis in 2018, with later phases to follow in 2018 and 2019.

By June 2017, seven more states — California, Connecticut, Maryland, New Jersey, Oregon, Vermont, and Washington — had joined Illinois in enacting laws authorizing a state-facilitated retirement savings program. Seven had begun implementing programs, each adapted to the state's own goals and expectations. The cities of New York, Philadelphia, and Seattle were also taking a close look. On July 1, 2017, Oregon's program became the first in the nation to open for business. During 2017, 23 states and cities were considering retirement savings programs for small-business employees.

Filling an Unmet Need

The need for solutions was real. Many small business owners were frustrated by their inability to find retirement plans for their workers, as vendors often found it uneconomical to offer services to firms

that lacked scale. “Mutual funds, banks, and insurance companies have done little to develop or market a retirement savings product geared to small employers,” wrote David Morse, a partner with the law firm K&L Gates.²¹ “The private sector is not particularly interested in this small and mostly unprofitable niche market.”²² The states, however, were well positioned to pick up the slack. As Morse noted, auto-IRAs are similar to “the highly successful college savings 529 programs: that is, a state-organized initiative to help private-sector workers voluntarily save for a future need.”²³

Still, opposition surfaced. Some financial services and insurance companies that specialized in retirement products regarded the state initiatives as a threat to their own offerings. As the states gained momentum, the backlash from corporate interests was strong, even though these same companies were vying for positions as investment advisers. “Some were quiet about the whole thing, but behind the scenes were trying to kill it while telling us how supportive they were,” said Kevin Lembo, Connecticut’s comptroller.²⁴

Auto-IRAs were absurdly denounced as unfunded pension plans in disguise, or as underhanded ways of propping up struggling public pension plans. These claims ignored the fact that in an IRA, there is no possibility of underfunding, because participants can get out only what they put in, plus or minus investment returns and low administrative expenses. And ample protections exist under law to ensure that IRAs are managed for the exclusive benefit of the participant.

By 2015, the state-facilitated programs had gained a powerful ally in President

Obama. That July, the president directed the Department of Labor to revise federal pension regulations to encourage the creation of the state programs. Announcing this initiative at the White House Conference on Aging, President Obama lauded the states’ actions to create ways for people without a workplace savings option to save for retirement. “We want to do everything we can to encourage more states to take this step,” he said, adding that the regulations would “provide a clear path forward for states to create retirement savings programs. And if every state did this, tens of millions more Americans could save for retirement at work.”²⁵

Proposed rules to amend the Employee Retirement Income Security Act (ERISA) to provide a safe harbor for state-facilitated retirement savings programs were issued before Thanksgiving 2015, unleashing a new wave of Secure Choice activity. One proposed rule covered states; a second one covered municipalities and other political subdivisions.

“I see this as possibly the most significant improvement in retirement security that this or any other administration has done in 60 years,” said Joshua Gotbaum, former director of the Pension Benefit Guaranty Corporation.²⁶

NCPERS Executive Director and Counsel Hank Kim said, “The creation of multiple-employer hybrid defined-benefit pension plans is a testament to the staying power of traditional pensions. The president’s support for state-facilitated programs underscores that traditional defined-benefit pensions have special qualities that are worth emulating.”²⁷

September 2016 brought another breakthrough as the most populous U.S.

Experts estimate the gap between retirement income and expenses at \$4 trillion to \$14 trillion for today’s adults.

Borzi Sought to Protect State Activities

Phyllis Borzi entered law school in 1975, the year ERISA's key provisions took effect. As assistant secretary of labor for employee benefits security under President Obama, she watched with keen interest as states began creating payroll-deduction retirement savings programs for their private-sector workers. In an interview, Borzi said she understood the states' sense of urgency and their frustration with slow progress in Congress. She led the push in the Department of Labor that culminated in the 2016 final rules and informative bulletin on state-facilitated Secure Choice programs. Excerpts from a recent interview²⁸ follow.

"I'm a firm believer in collective savings. The literature shows that people are more likely to save if they can save in the workplace. We began to talk internally at the Department of Labor about what we could do to help the states' efforts. In the meantime, we started to get inquiries from Capitol Hill and the White House."

"Eventually the White House directed us to put out a [second] safe harbor regulation. We felt comfortable the regulations would survive a court challenge. Unfortunately, Congress struck them down under the Congressional Review Act. That was completely political."

"I wish we had had another vote or two in the Senate [to prevent the repeal of the safe harbor rules]. It's really unfortunate. I wasn't overly surprised that they would take aim at the cities, but I thought they would leave the states alone."

state, California, enacted the California Secure Choice Retirement Savings Trust after four years of feasibility studies. Some seven million California residents were expected to be covered under the program, which was the work of California Senate President pro tempore Kevin de León, who called it "the largest expansion of retirement security since the New Deal."²⁹

Safe Harbor Opens – and Closes

The ERISA safe harbor called for by President Obama was designed to address concern that ERISA's reporting and disclosure rules would drive up the costs of offering auto-IRAs while providing no benefits to participants. Among practitioners, opinions were split as to whether a clear-cut exemption from ERISA already existed. Payroll withholding programs are clearly exempt from ERISA, provided the employer does not encourage employees to contribute, has little control or decision-making power, and does not profit from offering the program. Others wanted more reassurance, given that most Secure Choice states were requiring employers to auto-enroll workers.

But implementation of the ERISA safe harbor quickly became a political football after Donald Trump was inaugurated in January 2017. Republican lawmakers dusted off the rarely used Congressional Review Act of 1996 (CRA) to scrap the Department of Labor guidance. The CRA provided a shortcut for Congress and the president to repeal any federal regulation within 60 legislative days of its implementation. Without so much as a hearing, Congress caved to pressure from big financial companies to undermine state and municipal initiatives to help

ordinary people save for retirement. The mere fact that the Obama Administration had developed the ERISA safe harbor rules was red meat to many who voted by thin majorities to overturn them. The safe harbor for municipalities and other political subdivisions was the first to be shut down, with President Trump signing the repeal bill into law on April 13, 2017. Despite a hard fight to maintain the state safe harbor, its repeal was signed into law by President Trump on May 18, 2017.

Repeal was a setback, but not a defeat. "It's a speed bump," said Sarah Mysiewicz Gill, senior legislative representative for AARP. "It makes things more complicated and muddies the waters, but states aren't stopping and neither are we." AARP, which advocates for Americans 50 and older, will remain active in the Secure Choice movement going forward, Gill said. "We are working with 40 states in various stages of development. If there is any litigation moving forward, we would be active in that as well."³⁰

Michael Frerichs, state treasurer of Illinois, said President Trump, in repealing the safe harbor, "chose to ignore workers and the small business owners who want this retirement savings solution and instead side with the entrenched financial interests that he wailed against during the campaign."³¹ He added, "We remain committed to offering a savings option so Illinois workers can retire with dignity."³²

While these safe harbor regulations were helpful for programs with auto-enrollment features, they were not essential to the creation of state-facilitated workplace retirement savings solutions, which have been gaining steam since 2011. States and cities were marching ahead with their

programs before the Department of Labor rules were lawfully promulgated, and they will continue to do so now that the rules have been recklessly repealed. California has vowed to proceed with its Secure Choice Retirement Savings Program, which promises to be the largest in the nation. Connecticut, Illinois, Maryland, New Jersey, Oregon, and Washington had already adopted legislation to create new savings programs before the safe harbor was created and have given no indication that they will shift course.

"We were huge advocates for the safe harbor's staying in place. We thought it represented a lot of great thinking on the part of the Department of Labor, with a lot of input from external parties, to take the safe harbor from 1975 and make it a bit more explicit in how it applied to state-facilitated retirement programs," said Lisa Massena, executive director of the Oregon Retirement Savings Plan. "We didn't understand why it would be overturned by people who are interested in more safety and security, but we gave it a lot of consideration, and we are moving forward. If we don't, we face a lot of people who need access to workplace retirement savings."³³

The safe harbor repeal didn't prevent Vermont from adding its name to the growing roster of states that have enacted legislation to encourage private-sector employees to save for retirement. On June 8, 2017, Governor Phil Scott signed an economic development bill that directed the state to study and implement the Green Mountain Secure Retirement Plan, a voluntary program for businesses with 50 or fewer employees. The move made Vermont the ninth state to enact such legislation and the first state to facilitate a

multiple-employer program, subject to the same contribution limits and regulations as 401(k) plans. More than 100,000 employees would be eligible to participate.

Members of Congress are also pressing forward. Senator Mark Heinrich (D-N.M.) in May 2017 introduced legislation to preserve the rights of states and political subdivisions to encourage retirement savings. Dubbed “The Prosper Act,” the bill would amend ERISA to provide the safe harbors that the Obama Administration created through regulation.

The role of the states as a laboratory of innovation and change has been both underscored and tested by opposition to the Secure Choice movement. The fact remains, however, that states have a deep interest in the long-term well-being of their residents. Desirable jobs with good pay and benefits draw workers in. Workers’ ability to count on a retirement income strengthens local communities, while their

inability to do so represents, potentially, a severe strain on state resources.

Indeed there is growing evidence that states could offset some of the costs of Medicaid by requiring that a retirement savings program be made available for private-sector workers. A 2017 study by Segal Consulting found that savings across all 50 states and the District of Columbia could reach \$5 billion in the first 10 years after implementation.³⁴

“As states look at programs to build retirement savings, they are also asking how a population better prepared for retirement would affect public safety-net programs,” according to the Segal study.³⁵ Medicaid, as a major and growing piece of state budgets, has the greatest potential for savings if people are better prepared for retirement, the study continued. “Over time, as individual accounts grow, the potential for savings on state Medicaid expenditures increases exponentially.”³⁶

⁸ Diane Oakley and Kelly Kenneally, *Retirement Security 2017: A Roadmap for Policy Makers – America’s View of the Retirement Crisis and Solutions* (Washington, DC: National Institute on Retirement Security, February 28, 2017), http://www.nirsonline.org/storage/nirs/documents/2017%20Conference/2017_opinion_nirs_final_web.pdf.

⁹ Ruth Helman, Craig Copeland, and Jack VanDerhei, *The 2016 Retirement Confidence Survey: Worker Confidence Stable, Retiree Confidence Continues to Increase*, EBRI Issue Brief No. 422 (Washington, DC: Employee Benefit Research Institute, March 2016), https://www.ebri.org/pdf/briefspdf/ebri_ib_422.mar16.rcs.pdf.

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¹² Angela Antonelli, telephone interview with author, May 5, 2017.

¹³ “How Much Do I Need to Save for Retirement?,” *Fidelity Viewpoints* (blog), Fidelity, June 5, 2017, <https://www.fidelity.com/viewpoints/retirement/how-much-money-do-i-need-to-retire>.

¹⁴ VanDerhei, *Retirement Savings Shortfalls*; Rhee, *The Retirement Income Crisis*.

¹⁵ Timothy W. Martin, “The Champions of the 401(k) Lament the Revolution They Started,” *Wall Street Journal*, January 2, 2017.

¹⁶ *Ibid.*

¹⁷ “Another Black Eye for H&R Block,” editorial, *New York Times*, March 18, 2006.

¹⁸ Barack Obama, “Making It Easier to Save for Retirement,” radio address, September 5, 2009, <https://www.youtube.com/watch?v=IK5nn-nniso>.

¹⁹ Cited in Noah Weiland, “Vote to Kill Retirement Account Rule Draws Criticism from State-Level Republicans,” *New York Times*, May 5, 2017, <https://www.nytimes.com/2017/05/05/business/retirement/vote-to-kill-retirement-account-rule-draws-criticism-from-state-level-republicans.html?mcubz=0>.

²⁰ Kim, *The Secure Choice Pension*, 3.

²¹ David Morse, “Let Them Eat Cake,” *Benefits Law Journal* 30, no. 1 (2017): 5.

²² *Ibid.*, 5.

²³ *Ibid.*, 2.

²⁴ Kevin Lembo, telephone interview with author, April 24, 2017.

²⁵ White House, “Remarks by the President at White House Conference on Aging,” press release, July 13, 2015.

²⁶ Cited in Jennie L. Phipps, “DOL Says ‘Yes’ to State-Run Retirement Plans,” *Retirement Blog*, Bankrate, November 19, 2015, <http://www.bankrate.com/financing/retirement/dol-says-yes-to-state-run-retirement-plans/>.

²⁷ “Secure Choice Pension Proposal Gets Boost from Administration,” *The Monitor*, NCPERS, August 2015.

²⁸ Phyllis Borzi, telephone interview with author, May 19, 2017.

²⁹ Cited in Sophia Bollag and Samantha Masunaga, “Nearly 7 Million Californians Will Be Automatically Enrolled in State-Run Retirement Savings Plan under New Law,” *Los Angeles Times*, September 29, 2016.

³⁰ Gill, interview.

³¹ Cited in Office of Illinois State Treasurer, “President Trump Repeals Retirement Savings Protections, Hurting Workers, Small Employers,” press release, May 18, 2017, http://www.illinoistreasurer.gov/TWOCMS/media/doc/May2017_TrumpSecureChoiceDecision.pdf, 1.

³² *Ibid.*, 2.

³³ Lisa Massena, telephone interview with author, May 15, 2017.

³⁴ Segal Consulting, “State Retirement Savings Initiatives Do More Than Enhance Retirement Security for Private Sector Workers,” *Data*, Winter 2017, <https://www.segalco.com/media/2966/data-1-2017.pdf>.

³⁵ *Ibid.*, 3.

³⁶ *Ibid.*, 3.

Part 2: The States Forge Ahead

The Secure Choice concept is becoming reality in 2017 as two states, each exemplifying a distinct approach to facilitating retirement savings for private-sector workers, begin implementing programs. In the auto-enrollment Roth IRA gets its first full-scale test. Washington State, meanwhile, is unveiling a marketplace designed to streamline and expand access to retirement accounts. These pioneering initiatives are being closely watched, as they will pave the way for additional states to put their own Secure Choice-inspired programs into effect.

Other important work is afoot. California, the largest and most ambitious Secure Choice state, has made clear it will not back down despite the setback of the safe harbor repeal. Connecticut, which had aimed to launch a program by January 2018, has slowed the process down to get the details right.

Oregon: First Active Program in the Nation

“Work Hard. Save Easy” is the motto of the OregonSaves program. On July 1, 2017, Oregon became the first state in the union to implement a program to address the oncoming retirement security crisis. In its pilot phase, OregonSaves provides a payroll-deduction retirement savings program to employers that express interest in participating. It will then roll out in phases, starting in 2018 with larger businesses and expanding over time to smaller businesses. Employers without retirement plans will eventually be required to put 5 percent of their workers’ pay into

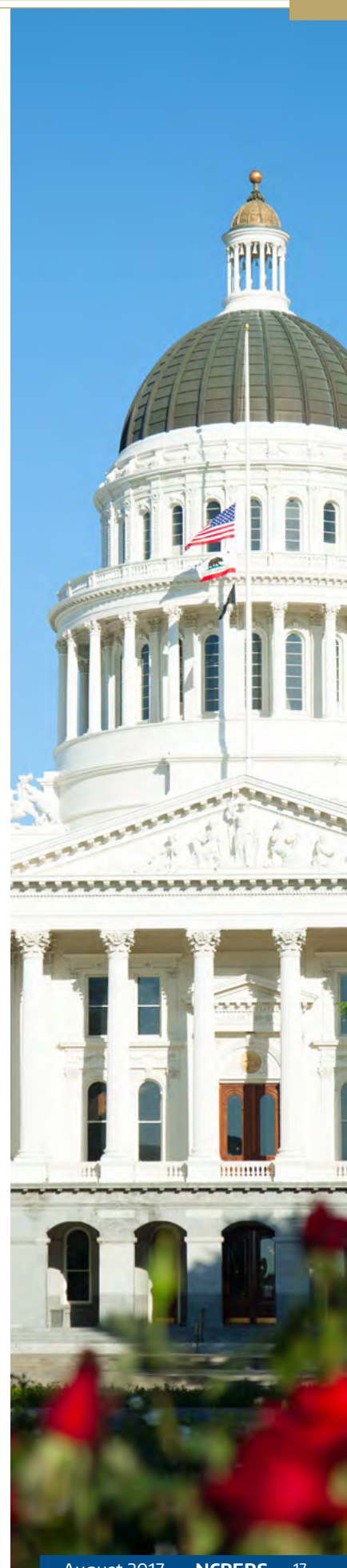
a state-facilitated program. Workers who prefer not to participate could opt out.

For Oregon, the congressional attempts to derail Secure Choice were a setback, but not a deterrent. In May 2017, State Treasurer Tobias Read expressed his dismay and disappointment at the rollback of the safe harbor rule. But, he said, “Oregon and states like us cannot afford to sit back and do nothing. The status quo is not working and we need to be part of the solution. Clearly, the answers will not come from Washington, D.C.”³⁷

The program is expected to have a strong impact in Oregon, which has a population of four million. In all, one million workers are potentially eligible for OregonSaves, and of these, 600,000 work for an employer that doesn’t offer a retirement plan. These employees will be automatically enrolled unless they opt out. The remaining 400,000 eligible workers are either self-employed or are not eligible for their employer’s retirement plan. They will have the ability to opt into the program at a later date.

Under Oregon’s program, employers initially would withhold 5 percent of each employee’s gross pay, increasing the amount by 1 percent each year until the deduction reaches a maximum of 10 percent. The first \$1,000 is invested in a capital preservation fund, and additional sums are invested in a targeted retirement fund based on the employee’s age.

As the first state to implement Secure Choice, Oregon is acutely aware that “what we are doing is truly new. The structural concept is a defined-contribution plan,



If every state
enacted workplace
auto-IRAs, “tens
of millions more
Americans could
save for retirement
at work.”

— President Obama

but the account type is an IRA,” said Lisa Massena, who became executive director of the Oregon Retirement Savings Plan in 2015. “That approach means we are bringing together governing authorities from the Department of Labor, the Securities and Exchange Commission, and the Internal Revenue Service in a way that’s never happened in the past.”³⁸

OregonSaves must also conquer operational challenges, Massena said. For example, “We’ve learned that we have over 26,000 users of QuickBooks here in Oregon. So Intuit is helping us to make sure it’s easy for those employers to do their OregonSaves payroll deductions.”³⁹

Washington: Marketplace Approach

The State of Washington is on course to become the first state in the union to create a retirement savings marketplace to connect small businesses with private-sector providers of retirement services. Washington’s Department of Commerce, which oversees the initiative, describes it as an “informational hub” that can help “simplify retirement savings options by providing helpful information and promoting affordable products. The guiding principles enable individuals to make informed decisions about their retirement and start building savings for their future.”⁴⁰

Originally slated to launch on January 1, 2017, the program will open later in the year because, as Marketplace Director and Policy Advisor Carolyn McKinnon announced, “As the first-in-the-nation initiative, we are creating our own blueprint.”⁴¹ Washington opted to take additional time to “get it right” with respect

to choosing products and providers, ensuring that all offerings meet criteria set by the legislature. In addition, Washington is coordinating with other states that are considering the marketplace model to see whether consistent criteria, including fee structures, can be established.

An introductory launch is planned for mid-2017. During the introductory phase, products will be available and the Commerce Department will actively seek feedback on the website and product offerings, McKinnon explained in a bulletin distributed to businesses.⁴²

California: The Biggest Entrant

In September 2012, California enacted legislation establishing the California Secure Choice Retirement Savings Trust and authorizing a feasibility study for a state-facilitated retirement savings program. Four years to the month later, in September 2016, California Governor Jerry Brown signed legislation fully authorizing the California Secure Choice Retirement Savings Trust. This action by the nation’s most populous state, with an economy bigger than that of all but five of the world’s nations, was a turning point in the fight for financial empowerment. The program would create an important new savings option for more than seven million Californians.

State Senator Kevin de León had the least advantaged Californians in mind when he introduced the legislation in 2012. “California has a massive service industry,” he said at the time. “Hotel housekeepers. Coffee-shop workers. None have much of a retirement savings. Legions are living in poverty trying to rely on an extremely strained social-services safety net. There’s

a bigger retirement time bomb ticking than anyone realizes.”⁴³

Under the new law, workers who do not have a workplace retirement plan will automatically contribute 3 percent of their wages to a new retirement account, the California Secure Choice Retirement Savings Trust. This fund will invest in a diversified portfolio that focuses on long-term financial growth. Workers can change their contribution levels at any time, or choose not to participate. The legislation prohibits the state or employers from incurring any liabilities associated with the new program.

After five years spent shepherding the Secure Choice bill through the legislature and to the governor’s desk, de León is entitled to a victory lap, but he says there is no time for it. “We have a couple real challenges before us, one being a successful launch,” he explained in an interview. “Execution will require an incredible amount of resources because we need to educate participants. We will need to take lessons from what President Obama went through with the Affordable Care Act. He put a lot of political capital on the line to get this historic health measure passed in Congress, and he did it successfully.”⁴⁶

The appointment in April 2017 of Katie Selenski as the first executive director of the California Secure Choice Retirement Savings Program was an important milestone. Current plans call for the program to open in late 2018 or early 2019, she said in an interview. “Then the compliance clock starts ticking,” she added, noting that employers with 100 or more employees will have a year to comply. Companies with 50 to 99 will have

For California’s Kevin de León, the Retirement Crisis Is Personal

To Kevin de León, an elderly aunt who was still cleaning homes for a living in her mid-70s was the embodiment of the retirement gap crisis.

Senator de León, president pro tempore of California’s senate, has been the driving force behind the state’s Secure Choice Retirement Savings since he introduced the legislation in 2012. His Aunt Francisca, whom he calls “my second mother,” worked her entire life until she was no longer able to work after suffering a stroke. She never accepted a dime in government aid even as she struggled to pay for medication, rent, food, a bus pass, and health care. Monthly checks from her nephew helped – “I am her defined-benefit plan, her defined-contribution plan, and her Roth IRA,” de León said.⁴⁴

He authored California’s Secure Choice law in part because “my aunt couldn’t be the only Californian or only American working well into her 70s, when she should have been enjoying her life. She is not an outlier. She’s the norm for tens of millions of Americans.”⁴⁵

two years, and companies with five to 49 will have three years. Other immediate challenges include building staff, hiring consultants to advise on program design, writing regulations, and getting feedback from consumer and employee groups.⁴⁷

California's experience will be closely watched because of its bellwether potential, said Jeremy Smith, associate director of the Aspen Institute Financial Security Program. "Reaching seven million new people and making the case that you can do it effectively turns one state's experience into something bigger," Smith said. "California has the potential to be a game changer."⁴⁸

Illinois and Connecticut: Getting Ready for the Final Push

On January 4, 2015, Illinois became the first state to enact Secure Choice legislation. The sheer scope of its program – expected to reach 1.2 million residents – prompted Illinois to take a go-slow approach to implementation. Originally

slated to start June 1, 2017, the program is now expected to begin on a pilot basis in 2018 and expand in 2018 and 2019.

The work of the Illinois Secure Choice Savings Board provides insights into the complexity of the work involved in starting up a program. Between August 2015 and April 2017, the full board met 13 times, with a robust agenda for each session; the program design and investment subcommittees also met several times. Topics before the board were wide-ranging, including establishing governance, selecting investment advisors, coordinating with other agencies, monitoring technical corrections legislation, devising the board's work plan, designing the program, selecting record keepers, and reaching out to businesses that qualify for participation.⁴⁹

Illinois's program requires employers with 25 or more workers who do not already offer their employees a retirement plan to automatically enroll their workers aged 18 and older in a state-run payroll-deduction Roth IRA. The requirement applies to both for-profit and nonprofit employers, and is also open to employers with fewer than 25 workers who wish to participate on a voluntary basis.⁵⁰

The 600,000 eligible employees in Connecticut will also have to wait a little longer than anticipated. The Connecticut Retirement Security Authority technically has a January 2018 deadline to launch, "but we need a full year," said Kevin Lembo, the state comptroller, said in April 2017.⁵¹

The planning process and market feasibility studies are done, Lembo said in an interview.⁵² Changes in the legislative process slowed things down a bit as the

Thirteen million workers are poised to gain access to automatic retirement savings accounts under current DOL regulations

	% of Private Sector Employees Age 25-64 without Access to Workplace Retirement Plan 2015*	Workers Eligible for State or Muni Auto-IRA** (millions)
California	61%	7.8
Connecticut	49%	0.6
Illinois	56%	2.4
Maryland	53%	1.2
Oregon	54%	1.0
Total eligible workers in state-run programs		13.0

* Author's analysis of CPS ASEC.

** CA, CT, IL, and MD eligible worker estimates are based on author's analysis of CPSE ASEC and state rules on eligibility by firm size. Universe is private sector workers age 18-64 who do not have access to a workplace retirement plan. OR estimate is from the Oregon Retirement Savings Board, and also includes workers excluded by their employer's retirement plan eligibility rules.
Source: Nari Rhee, UC-Berkeley

state determined how to recoup start-up costs and handle administrative expenses. The governor also has two more board members to appoint before the full board can be seated, and the board dynamics will take some time to sort out.

"There will be all sorts of challenges around implementation," Lembo added. "Educating business owners, reaching them, finding technology solutions, educating on investment choices, all of that. None are insurmountable."⁵³

Vermont: A Different Tack

In June 2017, Vermont became the ninth state to adopt Secure Choice, via the Green Mountain Secure Retirement program, a Secure Choice-inspired program with a twist.

Vermont is poised to be the first state to offer a multiple-employer plan,

which would enable employees to pool their retirement savings with workers from other companies. Pooling enables investors to reap economies of scale. In contrast, the auto-IRAs favored by most states do not involve pooling of assets. Another key difference from other state programs is that Vermont would allow the possibility of employer contributions, a feature that is not permitted in the auto-IRA programs.

The Green Mountain Secure Retirement program is expected to begin operations in January 2019. State Treasurer Beth Pearce noted that enactment follows three years of study and analysis overseen by her office. "This program will broaden the opportunity for more Vermonters to be better prepared for retirement and in doing so strengthen the economic vitality of our state," Pearce said.⁵⁴



³⁷ Oregon State Treasury, "Treasurer Read: 'Republican Attack on Retirement Savings Will Not Halt Our Commitment to Working Oregonians,'" news release, May 3, 2017, <http://www.oregon.gov/treasury/Newsroom/Pages/ViewArticle.aspx?pressReleaseID=185>.

³⁸ Massena, interview.

³⁹ Ibid.

⁴⁰ State of Washington Department of Commerce, "Small Business Retirement Marketplace," accessed June 28, 2017, <http://www.commerce.wa.gov/growing-the-economy/business-services/small-business-retirement-marketplace/>.

⁴¹ Carolyn McKinnon, "An Update from Carolyn McKinnon, Marketplace Director," State of Washington Department of Commerce, February 1, 2017, <https://content.govdelivery.com/accounts/WADOC/bulletins/1842abc>.

⁴² Ibid.

⁴³ Cited in George Skelton, "A Retirement Plan for the Forgotten," *Los Angeles Times*, February 23, 2012.

⁴⁴ Kevin de León, telephone interview with author, April 26, 2017.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Katie Selenski, telephone interview with author, May 15, 2017.

⁴⁸ Jeremy Smith, telephone interview with author, April 28, 2017.

⁴⁹ Secure Choice Board meeting minutes and other materials can be found at http://illinoistreasurer.gov/Individuals/Secure_Choice/Secure_Choice_Board_Meeting_Materials.

⁵⁰ "The Illinois Secure Choice Savings Program Act," Pension Rights Center, accessed June 19, 2017, <http://www.pensionrights.org/issues/legislation/illinois-secure-choice-savings-program-act>.

⁵¹ Lembo, interview.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Beth Pearce, "Treasurer Pearce Statement on the Passage of S.135 Creating the Green Mountain Secure Retirement Plan," State of Vermont Office of the State Treasurer, May 19, 2017, <http://www.vermonttreasurer.gov/press-releases/treasurer-pearce-statement-passage-s135-creating-green-mountain-secure-retirement>.

Part 3: What's Next?

State initiatives are shining a bright light on the need for retirement security solutions and the budget consequences of failing to act.

The five years since work began in earnest on Secure Choice-inspired retirement plans have brought dramatic changes. What challenges await stakeholders in the five years ahead? The answers are likely to fall into at least three buckets: implementation, regulatory and legal challenges, and innovation.

As programs begin to take shape, there are numerous implementation questions still to be answered, said Angela Antonelli, executive director of the Center for Retirement Initiatives at Georgetown University's McCourt School of Public Policy. What can states do to effectively minimize burdens on small businesses and workers? How will the program apply to "contingent workers," such as freelancers and contractors? How will the required worker opt-out disclosures and procedures be developed and communicated?⁵⁵

Antonelli added that the states can accomplish a great deal by addressing the problem of retirement security. They have the opportunity "to show the benefits of well-structured public-private partnerships and to push the private sector to do more and better on its own in serving existing employer-sponsored plans. The state initiatives are shining a bright light on the need and the budget consequences of failing to act, pushing policymakers to address long-standing challenges such as savings portability and the needs of contingent workers," she stressed.⁵⁶

"Proof of concept" — getting several state programs off the ground, understanding the good and bad effects — will be a priority over the next several

years, said John Scott, director of the Retirement Savings Project at the Pew Charitable Trusts. "A lot of learning will be going on. It's important to get it right and not rush to get things done." The reality is that there are stakeholders that want to see these programs fail, Scott added. "It's going to be a delicate process."⁵⁷

In the longer term, Scott added, "we need to solve the national problem. There will be a lot of states that won't do this. How do we come up with a national program that works across all 50 states? That's the end goal."⁵⁸

"We are pretty confident that the design of our program is going to let us go forward no matter what Washington [D.C.] does," said Kevin Lembo, the Connecticut comptroller. "Five years from now we will have a couple of successful years under our belt, we'll be able to measure trends and performance data, and we will be much more educated as to how this can be an efficient, effective program."⁵⁹

"I'm hoping that by 10 years out, it's just another product in the marketplace and we are moving closer to retirement security in Connecticut," Lembo said.⁶⁰

It's important for California and other states to get their programs up and running, said Nari Rhee, manager of the Retirement Security Program at the University of California, Berkeley, Center for Labor Research and Education. "It will make it more defensible, once people are in a program and see how it benefits them." More discussion is needed about investment goals, she added. "Is it just a defined-contribution plan, or is it going

to try and cushion people from market shocks? Our study has offered up one conceptual option – collectively pooling risk.”⁶¹

“Once we have a successful launch, I think other states, even red states, will have to say retirement security is an issue that is not partisan,” said Kevin de León. “It’s not a political issue, it’s an American issue. Ultimately, it is about making sure we provide a modicum of dignity and respect for all Americans.”⁶²

The landscape has shifted in the five years since Illinois became the first state to enact retirement savings programs for private-sector workers. The problem of retirement security has grown steadily larger. However, the ranks of states prepared to confront the problem have multiplied. It is a remarkable accomplishment to be able to say that most states and a number of cities have considered or still are carefully examining the options that NCPERS laid out in the 2011 SCP paper.

As this white paper was being finalized, Oregon became the first state to implement a Secure Choice-inspired retirement program on July 1, 2017. And the nine states that have adopted programs thus far have opted for three distinct approaches: auto-IRAs for most, marketplaces for a few, and a multiple-employer plan for the latest arrival, Vermont.

The goal of the Secure Choice movement – achieving retirement security for all – remains as vital today as it was in 2011.

⁵⁵ Antonelli, interview.

⁵⁶ Ibid.

⁵⁷ John Scott, telephone interview with author, May 1, 2017.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Nari Rhee, telephone interview with author, May 1, 2017.

⁶² de León, interview.



APPENDIX 1

State and Local Developments

Status of legislative initiatives to implement public/private retirement programs related to the Secure Choice Pension model.

(Updated July 10, 2017)

Employer Alert: The mandate will not go into effect for at least two years. 2019 is likely to be the earliest that large employers that do not offer a retirement plan to their employees will be required to provide access to Secure Choice. The mandate will be phased in over a three-year period.

	LAW ENACTED	PROGRAM STATUS	WORKERS ELIGIBLE
California	Sept. 29, 2016	The mandate for employers without a retirement plan to provide access to California Secure Choice will be phased in over three years beginning no earlier than 2019. ¹	7.8 million
Connecticut	May 27, 2016	The 15-member board of directors of the Connecticut Retirement Security Authority has a quorum. ² The program has a deadline of January 1, 2018, to launch, but is expected to require additional time. ³	600,000
Illinois	Jan. 4, 2015	The Illinois Secure Choice Savings Board has been established and is meeting monthly. Program enrollment will be phased-in over time, beginning with a phase one pilot program in 2018. ⁴	1.2 million
Maryland	May 10, 2016	The 11-member Maryland Small Business Retirement Savings Board ⁵ began organizational meetings in November 2016. The target timetable for program implementation is still under development. Program launch is currently estimated to occur by year-end 2018 or sometime in 2019. ⁶	1 million
Massachusetts	March 22, 2012	A prototype defined-contribution program was authorized to cover nonprofits only with 20 or fewer employees. Massachusetts has reported no progress on implementation. ⁷	35,000 to 45,000 at time of enactment ⁸
New Jersey	Jan. 19, 2016	New Jersey Small Business Retirement Marketplace, for companies with 100 or fewer workers, was established by the legislature ⁹ and signed into law with modifications by the governor. ¹⁰ No progress has been reported on implementation. ¹¹	1.7 million
Oregon	June 25, 2015	OregonSaves became the nation's first auto-IRA program, opening for business July 1, 2017. ¹²	1 million
Vermont	June 8, 2017	First state to enact law creating a multiple-employer plan. Green Mountain Secure Retirement will be open to companies with 50 or fewer employers. Employer participation is voluntary. ¹³	104,000
Washington	May 18, 2015	The Washington Small Business Retirement Marketplace is creating its blueprint and plans an introductory launch in 2017. ¹⁴	>1 million

¹ Found at: <http://www.treasurer.ca.gov/scib/>

² <http://cri.georgetown.edu/states/2017states/connecticut/>

³ Telephone interview with Kevin Lembo, Connecticut Comptroller, April 24, 2017

⁴ Found at: http://www.illinoistreasurer.gov/Individuals/Secure_Choice

⁵ Found at: <http://msa.maryland.gov/msa/mdmanual/25ind/html/66smallbusret.html>

⁶ Found at: <http://cri.georgetown.edu/states/2017states/maryland/>

⁷ Found at: <http://cri.georgetown.edu/states/2017states/massachusetts/>

⁸ Douglas Appell, "Massachusetts Law Paves Way for DC Plan for Small Nonprofit Organizations," Pensions & Investments, March 23, 2012.

⁹ Found at: http://www.njleg.state.nj.us/2014/Bills/PL15/298_.PDF

¹⁰ Tara Siegel Bernard, "New Jersey Creates Retirement Savings Plan, Modified by Christie, The New York Times, January 19, 2016.

¹¹ Found at: <http://cri.georgetown.edu/states/2017states/new-jersey/>

¹² David B. Brandolph, "Oregon to Launch Retirement Plan for Private Sector Workers," Pension & Benefits Daily, June 29, 2017. Found at: <https://www.bna.com/oregon-launch-retirement-n73014461019/>

¹³ Found at: <http://cri.georgetown.edu/vermont-governor-signs-into-law-green-mountain-secure-retirement-plan/>

¹⁴ State of Washington, Department of Commerce, "An Update from Carolyn McKinnon, Marketplace Director," February 1, 2017. Found at: <https://content.govdelivery.com/accounts/WADOC/bulletins/1842abc>

Model Legislation

The Secure Choice movement has been powered by the availability of model legislation, which provides a guide that states can use to shape their own laws. Following are two model statutes, prepared in June 2017, which reflect knowledge gained over years of experience with Secure Choice-inspired programs. The first is for auto-IRAs; the second, for multi-employer plans. We thank David Morse, partner at K&L Gates in New York, for these model statutes.

Automatic Individual Retirement Account (Auto-IRA) Model Statute

Section 1. Title of Act. This Act may be cited as the [State] Secure Choice Retirement Savings Program Act.

Section 2. Statement of Purpose and Policy. The [Legislature] finds: that large numbers of households in this State have no or inadequate retirement savings and many of those households do not have access to any savings plan at work; that this lack of retirement savings and coverage is more prevalent among low-income households; and that it is well-established that most workers will save for retirement if they are offered a workplace savings program using an opt out approach. [State] is deeply concerned about the retirement prospects of its citizens and the strain that large numbers of ill-prepared retirees may impose on taxpayer-financed elderly assistance programs for housing, food, medical care, and other necessities. Accordingly, this Act will facilitate voluntary retirement savings by workers in this State by establishing an IRA savings program and requiring employers in this State that do not offer a retirement plan to make the Program available to their employees.

Section 3. Definitions. As used in this Act:

- (a) "Administrative Fund" shall mean the [State] Secure Choice Retirement Savings Administrative Fund established under Section 7.
- (b) "Board" means the [State] Secure Choice Retirement Savings Board established under Section 4.
- (c) "Compensation" means compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by a Covered Employee from a Covered Employer.
- (d) "Contribution Rate" means the percentage of a Covered Employee's Compensation that is withheld from his or her Compensation and paid to the IRA established for the Covered Employee under the Program.
- (e) "Covered Employee" means [any individual who is 21 years of age or older, who is employed by a Covered Employer, and who has Compensation that is allocable to the State. For purposes of the investment, withdrawal, transfer, rollover or other distribution of an IRA, the term Covered Employee also includes the beneficiary of a deceased Covered Employee and an "alternate payee" under State domestic relations law.
- (f) "Covered Employer" means an Employer that either:
 - (i) satisfies all of the following requirements:
 - (A) has at no time during the previous calendar year employed fewer than [NN] employees in the State;
 - (B) has been in business for at least [NN] years; and
 - (C) has not been a participating or contributing employer in a retirement plan under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of Internal Revenue Code at any time during the preceding two calendar years]; or
 - (ii) elects to be a Covered Employer as permitted in accordance with rules and procedures established by the Board.
- (g) "Employer" means a person or entity engaged in a business, profession, trade or other enterprise in the State, whether for profit or not for profit, that employs one or more individuals in the State; provided that a federal or state entity, agency or instrumentality (or any political subdivision thereof) shall not be an Employer.
- (h) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended.

- (i) "Investment Adviser" means (i) an investment adviser registered as such under the U.S. Investment Advisers Act of 1940 ("Advisers Act"), or (ii) a bank or other institution exempt from registration under the Advisers Act.
- (j) "Investment Fund" means each investment portfolio established by the Board within the Trust for investment purposes.
- (k) "IRA" means either an individual retirement account or individual retirement annuity established under Section 408 (traditional) or 408A (Roth) of the Internal Revenue Code.
- (l) "Program" means the [State] Secure Choice Retirement Savings Program established under this Act.
- (m) "State" means the [state/commonwealth] of [State].
- (n) "Trust" means the IRA retirement trust (or annuity contract) established under Section 8.
- (o) "Trustee" means the trustee of the Trust (including an insurance company issuing an annuity contract) selected by the Board under Section 8.

Section 3. [State] Secure Choice Retirement Savings Board.

- (a) There is hereby created the [State] Secure Choice Retirement Savings Board.
- (b) The Board shall consist of [NN] members as follows:
 - (i) The State Treasurer or his or her designee.
 - (ii) The following [NN] members appointed by the Governor:
 - (A) [Placeholder]
 - (B) [Placeholder]
 - (C) [Placeholder]
 - (iii) An individual appointed by [Placeholder]
- (c) The term of office of each member of the Board appointed by the Governor or [Placeholder] shall be four years, but each such member serves at the pleasure of the Governor or [Placeholder], as the case may be. *[Consider providing: for staggered terms; Board members only may be dismissed during their term for cause; and requirement that at least one Board member be experienced in small business, investment, retirement or employment matters.]* If there is a vacancy by any such member, the Governor or [Placeholder] shall appoint a replacement to serve for such member's unexpired term.
- (d) The State Treasurer or his or her designee shall serve as the Chairperson of the Board.
- (e) A majority of the members of the Board shall constitute a quorum for the transaction of business.
- (f) Members of the Board shall serve without compensation but may be reimbursed for reasonable and appropriate expenses incurred in connection with their Board duties from the Administrative Fund.

Section 4. Powers and Duties of the Board. The Board shall have the following powers and duties:

- (a) To design, establish, and operate the Program in accordance with the requirements set forth in Section 5.
- (b) To collect fees to defray the costs of administering the Program.
- (c) To enter into contracts necessary or desirable for the administration of the Program.
- (d) To hire, retain and terminate third party service providers as the Board deems necessary or desirable for the Program, including, but not limited to, consultants, investment managers or advisors, trustees, custodians, insurance companies, recordkeepers, administrators, actuaries, counsel, auditors and other professionals, provided that each service provider shall be authorized to do business in the State.
- (e) To determine the type[s] of IRAs to be offered, the default Contribution Rate and automatic escalation rate.
- (f) To employ a Program Director and such other individuals as the Board determines to be necessary or desirable to administer the Program and the Administrative Fund.
- (g) To develop and implement an outreach plan to gain input and disseminate information regarding the Program and retirement and financial education in general, to employees, employers and other constituents in the State.
- (h) Determine the number of days by which an Eligible Employer must make the Program

available to a Covered Employee upon first becoming an Eligible Employer or Covered Employee.

- (i) *[State agencies to provide assistance to Board.]*
- (j) *[The Board shall be independent of the State [executive] and may not impose any obligations on the State, nor may it pledge the credit of the State.]*
- (k) To adopt rules and procedures for the establishment and operation of the Program and to take such other actions necessary or desirable to establish and operate the Program in accordance with the Act.

Section 5. Consumer Protection; Fiduciary Duties.

- (a) The Board, the Trustee, and each Investment Adviser or other person which has control of the assets of the Trust shall be a fiduciary with respect to the Trust and IRAs established and maintained under the Program.
- (b) Each Covered Employer shall be required to provide Covered Employees with such information as the Board directs. No Employer acting as such shall be considered a fiduciary with respect to the Trust or an IRA or have fiduciary responsibilities under the Act.
- (c) Each fiduciary shall discharge its duties with respect to the Program solely in the interests of Covered Employees and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of like character and aims.

Section 6. [State] Secure Choice Retirement Savings Program. The [State] Secure Choice Retirement Savings Program shall be designed, established and operated in accordance with the following:

- (a) Each Covered Employer shall be required to offer to each Covered Employee an opportunity to contribute to an IRA established under the Program for the benefit of the Covered Employee through withholding from his or her Compensation. No Employer shall be permitted to contribute to the Program or to endorse or otherwise promote the Program.
- (b) Unless the Covered Employee chooses otherwise, he or she shall be automatically enrolled in the Program and contributions shall be withheld from such Covered Employee's Compensation at a rate set by the Board unless the Covered Employee elects not to contribute or to contribute at a different rate.
- (c) The Contribution Rate of each Covered Employee shall be increased at such rate and at such intervals as from time to time established by the Board, unless the Covered Employee elects not to have such automatic increases apply.
- (d) The IRAs shall qualify for favorable federal income tax treatment under Section 408 and 408A (as appropriate) of the Internal Revenue Code.
- (e) The Board may establish intervals after which a Covered Employee must reaffirm elections with regard to participation or escalation.
- (f) Each Covered Employer shall deposit Covered Employees' withheld contributions under the Program with the Trustee in such manner as is determined by the Board, provided that the Employer shall deliver the amounts withheld to the Trustee in good order within [ten] business days after the date such amounts otherwise would have been paid to the Covered Employee.
- (g) The Board shall determine the rules and procedures for withdrawals, distributions, transfers and rollovers of IRAs and for the designation of IRA beneficiaries.
- (h) The Board shall report annually to the [Governor and Legislature] detailing the Board's activities and the Program's operations and shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Trust to [the governor, the controller, the state auditor, and the Legislature]. The annual audit shall be conducted by an independent certified public accountant.
- (i) The Board shall cause to be furnished to each Covered Employer:
 - (i) Information regarding the Program;
 - (ii) Required disclosures to be furnished to Covered Employees. Such disclosures shall include:

- (A) A description of the benefits and risks associated with making contributions under the Program.
 - (B) Instructions about how to obtain additional information about the Program.
 - (C) A description of the federal and state income tax consequences of an IRA, which may consist of or include the disclosure statement required to be distributed by the Trustee under the Internal Revenue Code and the Treasury Regulations thereunder.
 - (D) A statement that Covered Employees seeking financial advice should contact their own financial advisors and that Covered Employers are not in a position to provide financial advice and that Covered Employers are not liable for decisions Covered Employees make under the Act.
 - (E) A statement that the Program is not an employer-sponsored retirement plan.
 - (F) A statement that neither the Program nor the Covered Employee's IRA established under the Program is guaranteed by the State.
 - (G) A statement that neither a Covered Employer nor the State will monitor or has an obligation to monitor the Covered Employee's eligibility under the Internal Revenue Code to make contributions to an IRA or to monitor whether the Covered Employee's contributions to the IRA established for the Covered Employee under the Program exceed the maximum permissible IRA contribution; that it is the Covered Employee's responsibility to monitor such matters; and that neither the State nor the Covered Employer will have any liability with respect to any failure of the Covered Employee to be eligible to make IRA contributions or any contribution in excess of the maximum IRA contribution.
- (iii) Information, forms and/or instructions to be furnished to Covered Employees at such times as the Board determines that provide the Covered Employee with the procedures for:
- (A) Making contributions to the Covered Employee's IRA established under the Program, including a description of the automatic enrollment rate, the automatic escalation rate and frequency and the right to elect to make no contribution or to change the Contribution Rate under the Program.
 - (B) Making an investment election with respect to the Covered Employee's IRA established under the Program, including a description of the default investment fund.
 - (C) Making transfers, rollovers, withdrawals and other distributions from the Covered Employee's IRA.
- (i) Each Covered Employer shall deliver or facilitate the delivery of the items set forth in Section 5(k)(ii) and 5(k)(iii) to each Covered Employee at such time and in such manner as determined by the Board.
- (j) The Program shall be designed and operated in a manner that will cause it not to be an employee pension benefit plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974.

Section 7. [State] Secure Choice Retirement Savings Administrative Fund.

- (a) The [State] Secure Choice Retirement Savings Administrative Fund is hereby established in the State Treasury as a nonappropriated separate and apart from the Trust. The Board shall use moneys in the Administrative Fund to pay for administrative expenses it incurs in the performance of its duties under the Act. The Administrative Fund may receive any grants or other moneys designated for the Administrative Fund from the State, or any unit of federal or local government, or any other person. Any interest earnings that are attributable to moneys in the Administrative Fund must be deposited into the Administrative Fund.
- (b) *[Method of appropriations/loan to Administrative Fund initial board activities, hire staff, consultants & establish Program.]*

Section 8. [State] Secure Choice Retirement Trust. There is hereby created as an instrumentality of the State a Trust to be known as the [State] Secure Choice Retirement Savings Trust.

- (a) The Board shall appoint an institution qualified to act as trustee of IRA trusts or insurance company issuing annuity contracts under Section 408 of the Internal Revenue Code and licensed to do business in the State to act as Trustee.
- (b) The assets of IRAs established for Covered Employees shall be allocated to the Trust and combined for investment purposes. Trust assets shall be managed and administered for the exclusive purposes of providing benefits to Covered Employees and defraying reasonable expenses of administering and maintaining, and managing investments, of the IRAs and the Trust, including the expenses of the Board under Section 4.
- (c) The Board shall establish within the Trust one or more Investment Funds, each pursuing an investment strategy and policy established by the Board. The underlying investments of each Investment Fund shall be diversified so as to minimize the risk of large losses under the circumstances. The Board may, at any time and from time to time, add, replace, or remove any Investment Fund.
- (d) The Board may allow Covered Employees to allocate assets of their IRAs among such Investment Funds and in such case, the Board also may designate an Investment Fund as a default investment for the IRAs of Covered Employees who do not make an investment choice.
- (e) Subject to Section 8(f), the Board, in consultation with such third-party professional investment advisers, manager, or consultants as it may retain, shall select the underlying investments of each Investment Fund. Such underlying investments may include, without limitation, shares of mutual funds and exchange-traded funds, publicly-traded equity and fixed-income securities, and other investments available for investment by the Trust. No Investment Fund shall invest in any bond, debt instrument or other security issued by the State.
- (f) The Board may, in its discretion, retain an Investment Adviser to select and manage the investments of an Investment Fund on a discretionary basis, subject to the Board's ongoing review and oversight.
- (g) The Trustee shall be subject to directions of the Board under Section 8(e) or an Investment Adviser under Section 8(f) and shall otherwise have no responsibility for the selection, retention, or disposition of Trust investments or assets.
- (h) The assets of the Trust shall at all times be preserved, invested, and expended solely for the purposes of the Trust and no property rights therein shall exist in favor of the State or any Covered Employer. Trust assets shall not be transferred or used by the State for any purposes other than the purposes of the Trust or funding the expenses of operating the Program. Amounts deposited with the Trustee shall not constitute property of the State and shall not be commingled with State funds and the State shall have no claim to or against, or interest in, the Trust assets.
- (i) The assets of the Trust shall at all times be held separate and apart from the assets of the State. None of the State, the Program, the Board, any Board member nor any Employer shall guaranty any investment, rate of return, or interest on amounts held in the Trust, an Investment Fund, or any IRA. None of the State, the Program, the Board, any Board member or any Employer shall be liable for any losses incurred by Trust investments or otherwise by any Covered Employee or other person as a result of participating in the Program.
- (j) The provisions of the *[Name of State Blue Sky Statute]* shall not apply to the Trust, any Investment Fund, or any interest held by an IRA in the Trust or such Investment Fund.
- (k) The Trust and each Investment Fund shall not be subject to taxation under the *[Name of State Tax Law, if any]*.

Section 9. Construction. This Act shall be construed liberally in order to effectuate its legislative intent. The purposes of this Act and all of its provisions with respect to powers granted shall be interpreted broadly to effectuate the Act's intent and purposes.

Section 10. Effective Date of the Program. The Board shall establish the Program so that Covered Employees may begin making contributions by *[date]*.

Multi-Employer Plan (MEP) Model Statute

Section 1. Title of Act. This Act may be cited as the [State] Secure Choice Retirement Savings Plan Act.

Section 2. Definitions. As used in this Act:

- (a) "Board" means the [State] Secure Choice Retirement Savings Plan Board established under Section 3.
- (b) "Covered Employee" means an individual who is either employed by a Covered Employer or is self-employed and, in either case, is eligible to participate in the SCRSP.
- (c) "Covered Employer" means an Eligible Employer that has elected to join the SCRSP.
- (d) "DOL" means the United States Department of Labor.
- (e) "Eligible Employer" means a person or entity engaged in any lawful business in [State], whether for profit or not for profit, including a self-employed individual, but excluding a federal, state or foreign governmental entity, agency or instrumentality (or any political subdivision thereof).
- (f) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor thereto.
- (g) "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended, or any successor thereto.
- (h) "IRS" means the United States Internal Revenue Service.
- (i) "Participant" means a Covered Employee and, for investment and benefit payment purposes, includes the beneficiary of a deceased Participant and an "alternate payee" pursuant to a qualified domestic relations order under Section 414(p) of the Internal Revenue Code and Section 206(d)(3) of ERISA.
- (j) "SCRSP" means the [State] Secure Choice Retirement Savings Plan established pursuant to this Act.
- (k) "Trust" means the trust or annuity contract formed or issued under [State] law to hold the assets of the SCRSP.
- (l) "Trustee" means the financial institution and licensed to do business in [State] selected by the Board. *[Consider minimum standards for bank/insurance company.]*

Section 3. [State] Secure Choice Retirement Savings Plan Board.

There is hereby created a [State] Secure Choice Retirement Savings Plan Board.

- (a) The Board shall consist of [NN] members as follows:
 - (i) The State Treasurer or his or her designee.
 - (ii) The following [NN] members appointed by the Governor:
 - (A) [Placeholder]
 - (B) [Placeholder]
 - (C) [Placeholder]
 - (iii) An individual appointed by [Placeholder]
- (b) The term of office of each member of the Board appointed by the Governor or [Placeholder] shall be four years, but each such member serves at the pleasure of the Governor or [Placeholder], as the case may be. *[Consider providing for staggered terms. Also, consider requirement that at least one Board member be experienced in small business, investment, retirement or employment matters.]* If there is a vacancy by any such member, the Governor or [Placeholder] shall appoint a replacement to serve for such member's unexpired term.
- (c) The State Treasurer or his or her designee shall serve as the Chairperson of the Board.
- (d) A majority of the members of the Board shall constitute a quorum for the transaction of business.
- (e) Members of the Board shall serve without compensation but may be reimbursed from the Trust for reasonable and appropriate travel expenses incurred in connection with their Board duties.

Section 4. Powers and Duties of the Board. The Board shall have the following discretionary powers and duties:

- (a) To design, establish, and operate the SCRSP in accordance with the requirements set forth in Section 5, including causing the SCRSP plan documents to be prepared and amended.
- (b) To apply for determination letters from the IRS that the SCRSP satisfies the qualification requirements under Internal Revenue Code Section 401(a).
- (c) To collect fees to defray the costs of administering the SCRSP.
- (d) To enter into contracts necessary or desirable for the administration of the SCRSP and the Trust.
- (e) To hire, retain and terminate third party service providers as the Board deems necessary or desirable for the SCRSP and the Trust, including, but not limited to, the Trustee, consultants, investment managers or advisors, custodians, insurance companies, recordkeepers, administrators, consultants, actuaries, counsel, auditors and other professionals, provided that each service provider shall be authorized to do business in [State].
- (f) To employ an SCRSP director and such other individuals as the Board determines to be necessary or appropriate to administer the SCRSP.
- (g) To adopt rules and procedures for the establishment and operation of the SCRSP not inconsistent with the Act, ERISA and the Internal Revenue Code.
- (h) To develop and implement an outreach plan to gain input and disseminate information regarding the SCRSP and retirement and financial education in general, to employees, employers and other constituents in the [State].
- (i) To review and decide benefit claims and make factual determinations.
- (j) To delegate any of the discretionary powers and duties under this Section 4 to one or more qualified persons, provided that the Board shall monitor the conduct of all delegates and retain the right to revoke any delegation at any time and for any reason.
- (k) To take such other actions necessary or desirable to establish and operate the SCRSP in accordance with the Act, ERISA and the Internal Revenue Code.

Section 5. [State] Secure Choice Retirement Savings Plan. The [State] Secure Choice Retirement Savings Plan shall be designed, established and operated by the Board in accordance with the following:

- (a) The SCRSP shall be a tax-qualified defined contribution plan under Internal Revenue Code Section 401(a) which includes a cash or deferred arrangement under Internal Revenue Code Section 401(k). The SCRSP also shall be a "pension plan" under ERISA Section 3(2).
- (b) The SCRSP may be either a multiple employer plan under ERISA and the Internal Revenue Code Section 413(c) or a series of single employer plans with combined administrative and investment structures. If the Board adopts a single employer plan approach, the term SCRSP as used in the Act shall refer to each single employer plan and the aggregation of all such plans, as the context requires.
- (c) The Board shall be the "named fiduciary" and "plan administrator" of the SCRSP and, if the SCRSP is established as a multiple employer plan, the Board shall be "sponsor" of the SCRSP (as those terms are defined in ERISA).
- (d) A Covered Employer shall join or adopt the SCRSP (as the case may be) under such terms and conditions as the Board may require. If the SCRSP is a multiple employer plan, the Board shall allow a Covered Employer to cease membership and contributions and/or transfer the SCRSP accounts attributable to its Participants to another qualified plan sponsored or maintained by the Covered Employer and/or to individual retirement accounts or annuities in the name of each Participant in accordance with the Internal Revenue Code and ERISA. If the SCRSP is a single employer plan, the Board shall permit the Covered Employer to assume full sponsorship and responsibility for its plan.
- (e) The SCRSP shall provide for automatic enrollment of all Covered Employees at a contribution rate established by the Board and for the periodic automatic increase in such contributions all as determined from time to time by the Board in accordance with the applicable Internal Revenue Code and ERISA requirements. The Board also may provide for the automatic "reenrollment" of Covered Employees who had previously opted out of

contributing or are contributing at less than a specified rate.

- (f) The SCRSP may include either a traditional or Roth 401(k) or both.
- (g) The SCRSP may allow Covered Employers to adopt special rules and conditions in the SCRSP plan documents regarding employee eligibility, includible compensation for contribution purposes and the rate of matching and non matching contributions applicable to its Covered Employees, provided that all rules and conditions shall comply with the Internal Revenue Code and ERISA.
- (h) The SCRSP shall allow, but not require, Covered Employers to make matching and/or non matching contributions, provided that all employee and employer contributions shall always be fully vested. Employer contributions shall not be "integrated" with Social Security under Internal Revenue Code Section 414(l). *[Consider other limitations such as employer contributions must be a uniform percentage of each participant's pay.]*
- (i) The SCRSP may permit loans and hardship withdrawals from contributions under Internal Revenue Code 401(k), but not other contributions;
- (j) The SCRSP may permit a Participant to make non hardship withdrawals on or after obtaining a specified age established by the Board in the plan documents.
- (k) The SCRSP shall allow Participants to elect to receive distributions in the form of a cash lump sum, installments and through the purchase of an immediate or deferred annuity from an insurance company licensed to do business in [State]. The default distribution method shall be a lump sum payment.
- (l) Participants shall pay all the investment, operating and other costs of the Plan. Investment fees shall be deducted from the returns of the respective investment fund; general operating costs shall be charged as a percentage of each Participant's account, a flat dollar fee or a combination of the two as determined by the Board. Participants may be charged a separate fee for personal activities such as loan initiations, hardship withdrawals and domestic relation orders.
- (m) The Board shall cause to be furnished to each Covered Employee and, to the extent appropriate, other Participants:
 - (i) Information regarding the Plan, including a description of the benefits and risks associated with making contributions to the SCRSP in accordance with the ERISA "summary plan description" requirements and, to the extent applicable, the ERISA Section 404(c) notice and notices to comply with the automatic contribution election and escalation rules.
 - (ii) A statement that Participants seeking financial advice should contact financial advisors and that the Board, Board members, [State] and Covered Employers are not liable for decisions of Participants and do not guaranty their interest in the SCRSP or the Trust.

Section 6. [State] Secure Choice Retirement Savings Plan Contributions, Trust and Investments.

- (a) All assets of the SCRSP shall be held in the Trust by the Trustee. *[Consider minimum asset base or other added requirements for trustee/insurance company.]* Neither [State] nor any Covered Employer shall have any proprietary interest in the SCRSP or the Trust.
- (b) Each Covered Employer shall contribute its Covered Employee's 401(k) contributions and any Employer contributions to the Trustee as directed by and in accordance with requirements established by the Board, in accordance with ERISA, the Internal Revenue Code and applicable [State] law, including this Act.
- (c) The Trust shall not lend money or otherwise extend credit or invest in any securities of [State] or any instrumentality or subdivision thereof. The assets of the Trust shall not be commingled with any assets of [State]. The Trust shall not invest in any security of a Participating Employer. The amount held in the Trust shall not constitute property of [State], and [State] shall have no claim to or against, or interest in, such funds.
- (d) The Board shall establish and maintain an investment policy for the investment of SCRSP funds.
- (e) The Board or its delegate shall select one or more investment vehicles for the investment of Participants' accounts established under the SCRSP and, from time to time, to add,

replace or remove any such vehicle. An investment vehicle may be a registered mutual fund, a commingled fund or any other product or fund allowable for tax-qualified retirement programs; provided that a self-directed brokerage or similar product shall not be offered under the SCRSP.

- (f) The SCRSP *[shall][may]* permit Participants to direct the investment of their Plan account in a manner intended to satisfy the ERISA section 404(c) and the DOL regulations issued thereunder; provided that the Board may direct that all contributions made on behalf of a Participant be invested in a short duration fixed income investment until the Participant's balance reaches a stated level or the Participant has been participating for a stated period of time.
- (g) The *[State]*, SCRSP, the Board, any Board member, and any Covered Employer shall not guaranty any investment, rate of return or interest on any amounts held in the Trust and shall not be liable for any loss incurred by any person as a result of participating in the SCRSP.

Administrative Funds.

*[Appropriations/loan to fund initial board activities, hire staff, consultants & establish SCRSP]
[Authorization to conduct studies and apply for/receive outside grants.]*

Section 7. SCRSP Administration.

- (a) The Board shall from time to time develop procedures for resolving claims and other disputes with a Participant. The Board may impose in the SCRSP documents a time limitation of at least one year for a Participant to file a benefits claim and/or bring any legal action against the SCRSP, the Board, *[State]*, Trust or Trustee.
- (b) The SCRSP and Trust shall be audited annually by an independent accounting firm selected by the Board.
- (c) The Board shall develop and enforce policies and procedures to maintain the SCRSP as a qualified retirement plan under the Internal Revenue Code, including policies and procedures to comply with the applicable Internal Revenue Code contribution and benefit limitations, distribution and nondiscrimination rules. The Board may use the IRS and DOL correction procedures to remedy any noncompliance with the Internal Revenue Code and ERISA, impose remedial action on any Covered Employer for noncompliance with applicable law or failure to follow the SCRSP documents or otherwise to ensure that each Covered Employer fulfills its obligations under the SCRSP.
- (d) Any and all actions involving the SCRSP and Trust shall be subject to the exclusive jurisdiction of the state and federal courts located in *[State]*.
- (e) *[State agencies to provide assistance to Board.]*

Section 8. Effective Date of the Plan. The Board shall establish the SCRSP so that Eligible Employers may join and contributions may begin no later than *MM DD, 20YY*.

APPENDIX 3

Helpful Organizations and Websites

Many nonprofit organizations and academic institutions contribute to our collective understanding of retirement security issues. Highlighted below are some organizations that are among the most deeply engaged in research and analysis on this pressing topic. While it is far from comprehensive, this list reflects a diversity of views and approaches that have helped to shape public debate over retirement security.

Aspen Institute Financial Security Program. The program seeks to connect the world's best minds to find breakthrough solutions for America's family financial security crisis. Its projects include the Retirement Savings Initiative, which seeks comprehensive national policy solutions that re-imagine retirement. Jeremy Smith, associate director. www.aspeninstitute.org

AARP. AARP is a nonprofit, nonpartisan, social welfare organization with a membership of nearly 38 million that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families – such as health care, employment and income security, and protection from financial abuse. Sarah Mysiewicz Gill, senior legislative representative. www.aarp.org

Center for Retirement Initiatives at Georgetown University. CRI's mission is to advance retirement solutions and models. It has played a key role in connecting state policy makers, scholars and industry efforts and has created a working group to discuss implementation challenges and best practices. CRI also analyzes legislative and regulatory developments, assists with program design, and serves as a resource to all states and stakeholders. Angela Antonelli, executive director. <http://cri.georgetown.edu>

Center for Retirement Research-Boston College. A leading center on retirement research, CRR's areas of focus include Social Security, state and local pensions, and financing retirement. CRR reaches beyond economics to study behavioral factors that drive individuals' decisions. Alicia H. Munnell, director. <http://crr.bc.edu>

National Institute on Retirement Security. NIRS is a non-profit research and education organization established to contribute to informed policymaking by fostering a deep understanding of the value of retirement security to employees, employers, and the economy as a whole. NIRS seeks to encourage the development of public policies that enhance retirement security in America. Diane Oakley, executive director. www.nirsonline.org

The Pew Retirement Savings Project. This project of The Pew Charitable Trusts studies the challenges and opportunities for increasing retirement savings. The initiative examines barriers to retirement savings that affect workers, employers, and taxpayers; policies aimed at eliminating those barriers; and the fees associated with retirement plans. John Scott, director. www.pewtrusts.org

University of California at Berkeley Labor Center Retirement Security Program. The Labor Center conducts research on workers' retirement prospects in the context of threats to Social Security, the decline of secure workplace pensions, and the shift to individual investment accounts like 401(k)s. It also assesses state policies and proposals that aim to improve retirement security in California and nationally. Nari Rhee, director. <http://laborcenter.berkeley.edu>

A number of states have created web sites or web pages featuring their Secure Choice-inspired programs. This list, current as of July 2017, is likely to change and grow as programs take shape.

California: www.treasurer.ca.gov/scib/index.asp

Connecticut: www.osc.ct.gov/retirementsecurity/index.html

Illinois: www.illinoistreasurer.gov/Individuals/Secure_Choice

Maryland: <http://msa.maryland.gov/msa/mdmanual/25ind/html/66smallbusret.html>

Oregon: www.OregonSaves.com

Vermont: www.vermonttreasurer.gov/news/small-business-retirement-plan-passes

Washington: www.commerce.wa.gov/growing-the-economy/business-services/small-business-retirement-marketplace/

Revised SCP Plan Design and Estimated Effects on Retirement Income

The initial SCP plan was a hybrid accumulation design with stringent limitations on contribution volatility and benefit accumulation. Due to limitations in the tax code and potential ERISA implications, the states with enabling legislation have chosen to opt for a defined contribution approach predominately by utilizing a payroll deduction IRA platform.

The following scenarios, developed by Segal Consulting, provide the potential impact both as a percentage of pay at retirement and as a dollar amount as if retirement took place in 2017. The contribution rates in the various adopted bills range from 3 percent of pay to 6 percent. For illustration purposes, we show 3 percent, 4 percent, 5 percent and 6 percent contribution rates. We assume a range of investment rates of returns over a working career including 3 percent, 4.5 percent and 6 percent. Retirement is assumed to occur at age 65. Accumulated balances are converted to a life annuity at retirement based on the June 2017 PBGC annuity valuation rate. Social Security replacement ratios are based on the Social Security Administration Actuarial Note Number 2016.9 released July 2016. We show estimates based on low, medium and high average earnings and presume a full working career under Social Security.

Income-Replacement Scenarios for Secure Choice Pension (as a percentage of retirement income)

3% SCP Contribution Rate

Workers Earnings		Expected Social Security Replacement Ratio		Expected SCP Replacement Ratio			Total Replacement Ratio with SCP		
SCP Entry Age		3% Return	4.5% Return	6% Return	3% Return	4.5% Return	6% Return		
Low Earnings Workers (\$20,000)									
25	50%	10%	13%	18%	60%	63%	68%		
40	50%	6%	7%	8%	56%	57%	58%		
55	50%	2%	2%	2%	52%	52%	52%		
Medium Earnings workers (\$50,000)									
25	36%	10%	13%	18%	46%	49%	54%		
40	36%	6%	7%	8%	42%	43%	44%		
55	36%	2%	2%	2%	38%	38%	38%		
High Earnings Workers (\$75,000)									
25	30%	10%	13%	18%	40%	43%	48%		
40	30%	6%	7%	8%	36%	37%	38%		
55	30%	2%	2%	2%	32%	32%	32%		

4% SCP Contribution Rate

Workers Earnings	Expected Social Security Replacement Ratio	Expected SCP Replacement Ratio			Total Replacement Ratio with SCP		
SCP Entry Age		3% Return	4.5% Return	6% Return	3% Return	4.5% Return	6% Return

Low Earnings Workers (\$20,000)

25	50%	13%	18%	25%	63%	68%	75%
40	50%	7%	9%	11%	57%	59%	61%
55	50%	3%	3%	3%	53%	53%	53%

Medium Earnings workers (\$50,000)

25	36%	13%	18%	25%	49%	54%	61%
40	36%	7%	9%	11%	43%	45%	47%
55	36%	3%	3%	3%	39%	39%	39%

High Earnings Workers (\$75,000)

25	30%	13%	18%	25%	43%	48%	55%
40	30%	7%	9%	11%	37%	39%	41%
55	30%	3%	3%	3%	33%	33%	33%

5% SCP Contribution Rate

Workers Earnings	Expected Social Security Replacement Ratio	Expected SCP Replacement Ratio			Total Replacement Ratio with SCP		
SCP Entry Age		3% Return	4.5% Return	6% Return	3% Return	4.5% Return	6% Return

Low Earnings Workers (\$20,000)

25	50%	16%	22%	31%	66%	72%	81%
40	50%	9%	11%	14%	59%	61%	64%
55	50%	3%	4%	4%	53%	54%	54%

Medium Earnings workers (\$50,000)

25	36%	16%	22%	31%	52%	58%	67%
40	36%	9%	11%	14%	45%	47%	50%
55	36%	3%	4%	4%	39%	40%	40%

High Earnings Workers (\$75,000)

25	30%	16%	22%	31%	46%	52%	61%
40	30%	9%	11%	14%	39%	41%	44%
55	30%	3%	4%	4%	33%	34%	34%

6% SCP Contribution Rate

Workers Earnings Expected Social Security Replacement Ratio Expected SCP Replacement Ratio Total Replacement Ratio with SCP

SCP Entry Age 3% Return 4.5% Return 6% Return 3% Return 4.5% Return 6% Return

Low Earnings orkers (\$20,000)

25	50%	19%	26%	37%	69%	76%	87%
40	50%	11%	13%	16%	61%	63%	66%
55	50%	4%	4%	5%	54%	54%	55%

Medium Earnings workers (\$50,000)

25	36%	19%	26%	37%	55%	62%	73%
40	36%	11%	13%	16%	47%	49%	52%
55	36%	4%	4%	5%	40%	40%	41%

High Earnings Workers (\$75,000)

25	30%	19%	26%	37%	49%	56%	67%
40	30%	11%	13%	16%	41%	43%	46%
55	30%	4%	4%	5%	34%	34%	35%

Income-Replacement Scenarios for Secure Choice Pension (in dollars)

3% SCP Contribution Rate

Workers Earnings Expected Social Security Replacement Ratio Expected SCP Replacement Ratio Total Replacement Ratio with SCP

SCP Entry Age 3% Return 4.5% Return 6% Return 3% Return 4.5% Return 6% Return

Low Earnings Workers (\$20,000)

25	\$10,000	\$ 1,919	\$ 2,629	\$ 3,680	\$ 11,919	\$12,629	\$13,680
40	\$10,000	\$ 1,111	\$ 1,339	\$ 1,626	\$ 11,111	\$ 11,339	\$ 11,626
55	\$10,000	\$ 412	\$ 441	\$ 472	\$ 10,412	\$10,441	\$10,472

Medium Earnings workers (\$50,000)

25	\$18,000	\$ 4,798	\$ 6,573	\$ 9,200	\$22,798	\$24,573	\$27,200
40	\$18,000	\$ 2,777	\$ 3,346	\$ 4,065	\$20,777	\$21,346	\$22,065
55	\$18,000	\$ 1,030	\$ 1,103	\$ 1,181	\$19,030	\$ 19,103	\$ 19,181

High Earnings Workers (\$75,000)

25	\$22,500	\$ 7,198	\$ 9,859	\$13,800	\$29,698	\$32,359	\$36,300
40	\$22,500	\$ 4,165	\$ 5,019	\$ 6,097	\$26,665	\$ 27,519	\$28,597
55	\$22,500	\$ 1,545	\$ 1,654	\$ 1,771	\$24,045	\$ 24,154	\$ 24,271

4% SCP Contribution Rate

Workers Earnings	Expected Social Security Replacement Ratio	Expected SCP Replacement Ratio			Total Replacement Ratio with SCP		
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SCP Entry Age		3% Return	4.5% Return	6% Return	3% Return	4.5% Return	6% Return
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Low Earnings Workers (\$20,000)

25	\$10,000	\$ 2,559	\$ 3,530	\$ 4,976	\$ 12,559	\$ 13,530	\$ 14,976
40	\$10,000	\$ 1,481	\$ 1,797	\$ 2,198	\$ 12,221	\$ 11,797	\$ 12,198
55	\$10,000	\$ 549	\$ 592	\$ 638	\$ 10,824	\$ 10,592	\$ 10,638

Medium Earnings workers (\$50,000)

25	\$18,000	\$ 6,398	\$ 8,826	\$ 12,439	\$ 24,398	\$ 26,826	\$ 30,439
40	\$18,000	\$ 3,702	\$ 4,493	\$ 5,495	\$ 21,702	\$ 22,493	\$ 23,495
55	\$18,000	\$ 1,374	\$ 1,480	\$ 1,595	\$ 19,374	\$ 19,480	\$ 19,595

High Earnings Workers (\$75,000)

25	\$22,500	\$ 9,597	\$ 13,239	\$ 18,659	\$ 32,097	\$ 35,739	\$ 41,159
40	\$22,500	\$ 5,553	\$ 6,739	\$ 8,242	\$ 28,053	\$ 29,239	\$ 30,742
55	\$22,500	\$ 2,060	\$ 2,220	\$ 2,393	\$ 24,560	\$ 24,720	\$ 24,893

5% SCP Contribution Rate

Workers Earnings	Expected Social Security Replacement Ratio	Expected SCP Replacement Ratio			Total Replacement Ratio with SCP		
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SCP Entry Age		3% Return	4.5% Return	6% Return	3% Return	4.5% Return	6% Return
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Low Earnings Workers (\$20,000)

25	\$10,000	\$ 3,199	\$ 4,413	\$ 6,220	\$ 13,199	\$ 14,413	\$ 16,220
40	\$10,000	\$ 1,851	\$ 2,246	\$ 2,747	\$ 11,851	\$ 12,246	\$ 12,747
55	\$10,000	\$ 687	\$ 740	\$ 798	\$ 10,687	\$ 10,740	\$ 10,798

Medium Earnings workers (\$50,000)

25	\$18,000	\$ 7,997	\$ 11,032	\$ 15,549	\$ 25,997	\$ 29,032	\$ 33,549
40	\$18,000	\$ 4,628	\$ 5,616	\$ 6,869	\$ 22,628	\$ 23,616	\$ 24,869
55	\$18,000	\$ 1,717	\$ 1,850	\$ 1,994	\$ 19,717	\$ 19,850	\$ 19,994

High Earnings Workers (\$75,000)

25	\$22,500	\$ 11,996	\$ 16,549	\$ 23,324	\$ 34,496	\$ 39,049	\$ 45,824
40	\$22,500	\$ 6,942	\$ 8,424	\$ 10,303	\$ 29,442	\$ 30,924	\$ 32,803
55	\$22,500	\$ 2,575	\$ 2,774	\$ 2,991	\$ 25,075	\$ 25,274	\$ 25,491

6% SCP Contribution Rate

Workers Earnings Expected Social Security Replacement Ratio Expected SCP Replacement Ratio Total Replacement Ratio with SCP

SCP Entry Age 3% Return 4.5% Return 6% Return 3% Return 4.5% Return 6% Return

Low Earnings Workers (\$20,000)

25	\$10,000	\$ 3,839	\$ 5,296	\$ 7,464	\$13,839	\$15,296	\$17,464
40	\$10,000	\$ 2,221	\$ 2,696	\$ 3,297	\$ 12,221	\$12,696	\$ 13,297
55	\$10,000	\$ 824	\$ 888	\$ 957	\$10,824	\$10,888	\$10,957

Medium Earnings workers (\$50,000)

25	\$18,000	\$ 9,597	\$13,239	\$18,659	\$ 27,597	\$31,239	\$36,659
40	\$18,000	\$ 5,553	\$ 6,739	\$ 8,242	\$23,553	\$24,739	\$26,242
55	\$18,000	\$ 2,060	\$ 2,220	\$ 2,393	\$20,060	\$20,220	\$20,393

High Earnings Workers (\$75,000)

25	\$22,500	\$14,395	\$19,858	\$27,988	\$36,895	\$42,358	\$50,488
40	\$22,500	\$ 8,330	\$10,109	\$12,364	\$30,830	\$32,609	\$34,864
55	\$22,500	\$ 3,090	\$ 3,329	\$ 3,589	\$25,590	\$25,829	\$26,089



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