Updated March 18, 2022

State-Administered IRA Programs: Overview and Considerations for Congress

Overview

While Congress addresses retirement security at the national level and establishes federal pension and other savings incentives, several states have enacted or implemented state-administered retirement savings programs to increase retirement plan access and savings among private-sector workers. Because retirement plans, such as 401(k)s or defined benefit plans, are optional for employers to adopt, some workers may not have access to employment-based retirement benefits. In March 2021, 32% of private-sector workers did not have access to a workplace retirement plan. State-administered retirement programs are intended to provide savings options for workers without a workplace plan.

States are taking a variety of approaches to these programs, including the following: retirement marketplaces, in which employers and individuals can purchase a savings plan through different state-approved providers; multiple-employer plans, in which unrelated businesses may jointly sponsor a 401(k) plan; and payroll deduction Individual Retirement Accounts (IRAs), in which employers deduct a portion of pay from an employee's paycheck and deposit it into the employee's own IRA (a tax-advantaged retirement savings account regulated at the federal level). This In Focus describes the most common state-administered program—the payroll deduction IRA.

Table 1. State- and City-Administered Retirement Savings Program Approaches
(enacted programs as of March 2022)

Program Approach	States
Retirement Marketplace	NM, WA
Multiple-Employer Plan	MA, VT
Payroll Deduction IRA	CA, CO, CT, IL, ME, MD, NJ, NM, NY (and New York City, NY), OR, VA, WA (Seattle only)

Source: Congressional Research Service (CRS).
Notes: New Mexico (NM) enacted a combination of approaches. In November 2021, New Mexico and Colorado signed an agreement to operate a joint IRA program. New York State and New York City have both enacted programs.

In some state programs, employer participation is mandatory (with some exceptions). In other programs, employer participation is voluntary. Typically, eligible employees of participating employers are automatically enrolled in a program but can opt out at any time. Because of the automatic enrollment feature, these plans are sometimes referred to as automatic, or auto, IRAs. As of March 2022, seven states (Colorado, Maine, Maryland, New Jersey, New Mexico, New York, and Virginia) and two cities (Seattle, WA; and New York City, NY) have *enacted* auto IRA programs, and four states have *implemented* auto IRAs (California, Connecticut, Oregon, and Illinois). In November 2021, Colorado and New Mexico announced that their programs would form a partnership.

State-Administered Automatic IRAs

State-administered auto IRA programs share many features. A state retirement board oversees each program and is responsible for making program decisions, such as contracting with an IRA provider. Some programs are optional for employers to adopt; other programs are mandatory for nonexempt employers. Generally, exempt employers (1) are under a certain size or (2) already offer an employer-sponsored pension plan. Some programs also allow self-employed workers and those who do not work for a participating employer to self-enroll.

Among the programs in place as of March 2022, the default accounts are Roth IRAs. Contributions to Roth IRAs are made with after-tax income, and withdrawals in retirement are generally tax-free. Some programs also offer a traditional IRA option. Contributions to traditional IRAs may be tax deductible for individuals who do not have access to an employer-sponsored retirement plan. Because individuals with income over a certain threshold cannot contribute to Roth IRAs (e.g., a single filer with income of $144,000 or higher in 2022), some employees may have to opt out or choose the traditional IRA option.

State-administered IRA programs are subject to federal IRA contribution limits, which in 2022 are $6,000 ($7,000 for individuals aged 50 and over). The programs do not permit employer contributions. They have default contribution rates ranging from 3% to 5%. The default rate is the percentage of an employee's pay that is deducted when an employee is automatically enrolled but does not choose a contribution rate. Several of the programs also have an auto-escalation feature, which is a gradual increase in the worker's contribution rate over a specified number of years.

Employees can withdraw original contributions from Roth IRAs at any point. Any earnings withdrawn prior to age 59½ from accounts that are not at least five years old are included in taxable income and generally subject to a 10% penalty. Employees who change employers or move out of state can keep the same IRA or transfer savings to a different IRA.

State IRA Programs and ERISA

Whether federal pension law applies to state-administered IRAs has been subject to debate. Congress passed the Employee Retirement Income Security Act of 1974 (ERISA; P.L. 93-406) to protect the benefits of participants in private-sector pension plans. Among other things, ERISA sets standards for participation and fiduciary duties and outlines reporting requirements for these plans. Private-sector employers that establish or maintain plans that fall within ERISA's scope must comply with these requirements. Stakeholders have questioned whether states, in mandating private-sector employers to participate in payroll deduction savings programs, are unintentionally compelling employers to establish ERISA plans, subject to the act's comprehensive requirements.

Section 514 of ERISA broadly preempts "any and all" state laws that "relate to" ERISA-covered employee benefit plans. Accordingly, if a state-administered IRA program establishes an ERISA plan (or the state program is an ERISA plan itself), it is possible that state laws underlying the program may be superseded by ERISA and judicially invalidated.

The Department of Labor (DOL) has issued regulations addressing ERISA's relationship to private-sector payroll deduction IRAs. A 1975 regulation (29 C.F.R. §2510.3-2(d)) outlined four conditions for a payroll deduction IRA to *not* be considered an ERISA plan: (1) the employer makes no contributions, (2) employee participation is completely voluntary, (3) the employer does not endorse the program and merely facilitates it, and (4) the employer receives no consideration except for its own expenses. Some may question application of this regulation to state auto-IRA programs, for example, regarding the "completely voluntary" criteria required for payroll deduction IRAs. In August 2016, DOL issued a safe harbor regulation that established criteria for designing state-administered payroll deduction IRAs "as to reduce the risk of ERISA preemption" (29 C.F.R. §2510.3-2(h) (2016)). Under this regulation, state programs were required to be (1) authorized in state law and (2) administered by the state that established the program. The regulations specified that employer participation must be required by state law and limited the employer role to activities such as collecting payroll deductions and distributing program information. In December 2016, DOL issued another rule that expanded the applicability of the safe harbor to qualified state political subdivisions, which applied to cities that established payroll deduction IRA programs.

In April 2017 and May 2017, Congress used the procedures in the Congressional Review Act (CRA, enacted as part of P.L. 104-121) to nullify DOL's regulations creating safe harbors for savings arrangements established by qualified state political subdivisions and by states (P.L. 115-24 and P.L. 115-35, respectively). Senator Mitch McConnell contended that state-administered auto IRA programs would free states and cities from federal consumer protections and would create a competitive advantage for the programs compared to private-sector plans.

Following Congress's actions under the CRA, the issue of ERISA preemption remains uncertain. While a legal challenge to California's auto-IRA program on such grounds (*Howard Jarvis Taxpayers Assoc. v. Cal. Secure Choice Ret. Sav. Program*, No. 20-15591) was dismissed by the U.S. Court of Appeals for the Ninth Circuit in May 2021 and the Supreme Court declined to hear the case, it is possible that future litigants may seek to challenge whether ERISA preempts state laws that establish and administer auto-IRA state programs. Though there is not currently any legislation regarding the issue, it is possible that Congress could revisit the issue in the future.

Considerations for Congress

The goal of state-administered auto IRA programs is to increase retirement savings for individuals without access to employer plans. Although all individuals with wage income can establish and contribute to an IRA on their own, many do not. Advocates for state-administered programs cite research that employees are more likely to save for retirement if they are offered a plan through their workplace. If these programs were to increase individuals' savings above what they would have otherwise saved given the lack of access to an employer plan, states and the federal government could see reductions in demand for social services when workers retire.

Others have expressed concern that state-administered IRA programs may replace existing employer-sponsored plans. State-administered IRA programs differ from employer-sponsored defined contribution plans, such as 401(k) plans, in multiple ways. For example, annual IRA contribution limits ($6,000 [$7,000 for those 50 and older] in 2022) are lower than those for 401(k) plans, and IRAs generally lack employer contributions. The 401(k) employee contribution limit is $20,500 ($27,000 for those 50 and older); the combined employer and employee limit is $61,000 ($67,500 for those 50 and older). Compared with participants in 401(k) plans, those enrolled in payroll deduction IRAs may not accumulate savings at the same rate. Stakeholders have also expressed concern that state-administered plans in some states might lack adequate measures to protect participants' benefits (e.g., whether deposits would be made in a timely manner, fees would be reasonable, and investment choices prudent). Depending on the state, existing state law or provisions in authorizing legislation might alleviate some of these concerns. Another concern is that employers operating in multiple states could be required to participate in several programs, which could be administratively challenging. For example, employers might have to monitor employee eligibility for different state programs based on residence or office location.

Further Information

"Proceedings and Debates of the 115th Congress, First Session," *Congressional Record*, vol. 163, part 55 (March 29, 2017), p. S2055

CRS Report RL34397, *Traditional and Roth Individual Retirement Accounts (IRAs): A Primer*

Elizabeth A. Myers, Analyst in Income Security

IF11611

Disclaimer