

States Press On With Retirement Programs, Despite Losing Regulatory Cover

At least 20 states introduced legislation this year to bring retirement-savings plans to private-sector employees

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Several U.S. states are pressing ahead with efforts to bring retirement-savings plans to millions of private-sector employees, wagering they can defeat legal challenges that are expected after the Senate voted [to repeal regulations encouraging such initiatives](#).

At least 20 states introduced legislation in 2017 to consider such plans for residents without access to a workplace retirement plan, according to Angela Antonelli, executive director of Georgetown University's Center for Retirement Initiatives.

AARP, an advocacy group for older Americans, estimates about 55 million full- and part-time private-sector workers in the U.S. lack access to retirement-plan coverage through work.

Under the programs, the first of which expects to launch in Oregon in July, workers will contribute a percentage of their earnings to a retirement savings account. The states are responsible for setting up the plans, selecting the investment options and making sure employee savings are secure.

New Mexico recently approved a task force—typically the first step in creating a state plan—and Vermont is expected to ratify a retirement-savings program within days. Policy experts say a few more states could take similar steps by year-end; frequently mentioned names include North Carolina, Nevada and New York.

[Issued last year by the Labor Department](#), the regulations Congress repealed made it easier for states and local governments to require automatic enrollment in IRAs. They did so by clarifying that in such a scenario, the employers don't fall under tough fiduciary rules under the federal Employee Retirement Income Security Act, which governs 401(k) plans.

In the wake of the Senate's move Wednesday to scrap [the regulations](#), observers say opponents are likely to file court challenges against states that introduce plans requiring employers to automatically enroll employees in IRAs. To avoid the potential for legal challenges, some states are weighing alternative approaches, such as using 401(k)-style plans rather than IRAs.

The repeal—which President Donald Trump is expected to sign—puts many state-sponsored IRA programs “under a cloud,” said Massachusetts state Rep. Jim O'Day, who recently introduced a bill to establish a retirement-savings program in the state. “But I still think the individual states feel they have the capacity and authority to do this. I'm very optimistic.”

So far, seven states—including California, Oregon and Illinois—have approved programs for residents without access to a workplace retirement plan. All are vowing to press ahead. Oregon expects to start allowing a small number of companies to enroll employees in July.

Oregon will “continue to move forward” because “the need to address the oncoming retirement crisis is too great,” Oregon state Treasurer Tobias Read said after Wednesday's vote.

States are taking action because “if people save for retirement they are less likely to end up on welfare or Medicaid,” programs that cost states' money, said Joshua Gotbaum, chairman of the board that oversees Maryland's small-business retirement savings program. Maryland is among the states that plan to move forward regardless of the vote.

Some in the financial-services industry have been critical of the state-sponsored retirement plans, saying they would discourage small businesses from offering their own plans. The critics include companies that market 401(k) plans to small businesses and might not welcome the competition, said John Scott, director of the Retirement Savings Project at the Pew Charitable Trusts.

The rollback of the regulations makes “it a little less clear” whether state-run auto-Ira programs would have to comply with ERISA-related obligations, a broader set of federal regulations than IRAs are normally subject to and a legal status that states aren't eager to assume, said Mr. Scott.

With states moving ahead, policy experts say opponents are likely to file legal challenges against the auto-Ira programs. Officials in Oregon, Illinois and Maryland have said they believe they will prevail in court.

Some observers say that some states may wait for the courts to weigh in before deciding whether to offer a plan. In the Montana Legislature, for example, a bill authorizing a plan recently failed after opponents cited congressional opposition to the state-run programs, said Cristina Martin Firvida, director of financial security at AARP, which supports the state programs.

Some states and cities are exploring approaches considered less vulnerable to legal challenges.

Vermont's program, a so-called open Multiple Employer Plan, will offer a 401(k)-style plan to Vermont employers with 50 or fewer employees. While the plan would be voluntary for employers, those who choose to participate would auto-enroll employees, who could opt out, said a spokesman for Vermont state Treasurer Beth Pearce.

"The legislative session will wrap up in next two weeks and we think the bill is going to pass," he added.

North Carolina is looking at a program in which employees can choose to contribute to an IRA, said Ms. Martin Firvida.

Others, including New York City and Massachusetts, are considering offering a range of options, including a payroll-deduction IRA and a Multiple Employer 401(k) Plan.

New Jersey and Washington state have enacted programs that use yet another model. They avoid coverage mandates in favor of state-run marketplaces that help small companies shop for a retirement plan if they choose to offer one.

MOVING AHEAD

Seven states have approved legislation to create retirement savings plans for private-sector workers who lack access to a workplace plan.

- **State program:** California Secure Choice
 - Model: Opt-in IRA
 - Estimated launch: 2019
- **State program:** Connecticut Retirement Security
 - Model: Auto-enrollment in IRA
 - Estimated launch: undecided
- **State program:** Illinois Secure Choice
 - Model: Auto-IRA
 - Estimated launch: 2018
- **State program:** Maryland Small Business Retirement Savings
 - Model: Auto-IRA
 - Estimated launch: undecided
- **State program:** New Jersey Small Business Retirement Marketplace
 - Model: Voluntary plans
 - Estimated launch: undecided
- **State program:** OregonSaves
 - Model: Auto-IRA
 - Estimated launch: July 2017
- **State program:** Washington Small Business Retirement Marketplace
 - Model: Voluntary plans
 - Estimated launch: late 2017