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Publicly Sponsored Private Retirement Programs: A Comparison of Program Design Options and Features

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States Leading the Way — A Review of Program Design Options and Features

This chart summarizes and compares the range of program design options and features available to states to expand access to simple, low-cost retirement savings options for private sector workers.

To date, states have enacted new retirement savings programs for private sector workers using several types of plan designs:[1]

1) Payroll deduction IRAs using automatic enrollment ("Auto-IRA") that certain employers are required to offer if they have no other retirement plan;
2) Payroll deduction IRAs that employers can choose to join voluntarily;
3) Open Multiple Employer Plans (MEPs); and
4) Marketplaces.

All these program options are voluntary for employees — they can choose whether and how much to contribute. Five states (California, Connecticut, Illinois, Maryland, and Oregon) and the city of Seattle require employers that meet certain criteria to offer either the state-sponsored program or a similar alternative. Two (Washington and New Jersey) have enacted a retirement marketplace, two (Massachusetts and Vermont) have enacted MEPs, and one (New York) has enacted a payroll deduction IRA program that employers can join if they so choose.

Federal Legal and Regulatory Considerations Affecting State-sponsored Payroll Deduction IRAs. In 1975, the U.S. Department of Labor (DOL) created a regulatory safe harbor for payroll deduction IRAs, specifying the conditions under which such plans would be exempt from the Employee Retirement Income Security Act (ERISA).[2] Of course, this safe harbor did not envision state-sponsored programs that require employer participation or use automatic enrollment, since these features had yet to be conceived.

In 2016, in response to the large number of states with new programs, the DOL issued a second DOL safe harbor for the new state programs, requiring employer participation and using auto-enrollment. The 2016 safe harbor (but not the 1975 safe harbor) was subsequently nullified by Congress using the Congressional Review Act.[3] However, for the purposes of providing an overview of the features of a mandatory auto-IRA program, this brief includes the key conditions that were addressed in the nullified safe harbor.

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[1]See Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University, "State-Facilitated Retirement Savings Programs: A Snapshot of Plan Design Features (State Brief-18-03, May 31, 2018 Update)." https://cri.georgetown.edu/wp-content/uploads/2018/05/States_SnapShotPlanDesign5-31-18FINAL.pdf. 2018.
[2]The DOL has ruled in DOL Reg. Sec. 2510.3-2(d) that an employer IRA payroll deduction program is not an ERISA plan if 1) it is employee-pay-all (the employer does not make any contributions); 2) employee participation is completely voluntary; 3) employer involvement is limited to making the program known to employees, without endorsement, processing payroll withholding elections, and answering questions; and 4) the employer is not paid for offering the program.
[3]United States. Cong. *Joint Resolution Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by States for non-governmental employees.* 115th Congress. H.J.Res 66. 131 Stat. 848 (2017); United States. Cong. *Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by qualified State political subdivisions for non-governmental employees.* 115th Congress. H.J.Res 66. 131 Stat. 90 (2017).

States with programs that include an employer mandate and automatically enroll employees take the position that even without the 2016 safe harbor, the original 1975 DOL safe harbor still exempts their programs from ERISA.[4] A voluntary payroll deduction IRA model that does not make use of auto-enrollment also presumably would not be subject to ERISA as long as it follows the conditions of the original 1975 safe harbor.

Federal Legal and Regulatory Considerations Affecting Publicly Sponsored ERISA Programs. On November 18, 2015, DOL issued Interpretive Bulletin 2015-02 regarding certain state laws designed to expand the retirement savings options available to their private sector workers through ERISA-covered retirement plans. The guidance outlined three specific approaches states may choose to take, including marketplaces, open multiple-employer plans (MEPs), and master and prototype programs.

A MEP is a 401(k) or other retirement plan covered by the full scope of ERISA and the Tax Code "qualified" plan rules. ERISA 401(k) plans have higher contribution limits than IRA-based plans and allow both employers and employees to contribute. *However, ERISA also requires participation by employers and employees to be voluntary*. DOL has given a government-sponsored MEP greater operational freedom than one sponsored by a private sector entity. Specifically, an "open" MEP sponsored by a state or local government may allow any business employing state residents to join the program and removes the common bond requirement (i.e., being in the same industry) that currently exists for other MEPs.[5] An advantage of a MEP should be lower employer costs through economies of scale.

In a prototype plan, the state (through its selected providers) would provide employers with an IRS-approved "fill-in-the-blank" plan. Investments, recordkeeping, and administration would also be managed by the state-selected providers. However, because a prototype is an individual (and not multiple) employer plan, the employer could be allowed greater flexibility in customizing the program. The downside to this flexibility could be higher costs compared to a MEP.

A marketplace allows the state to connect eligible, often small, employers with qualifying retirement savings plans offered by private sector providers. Only pre-screened products that the state determines are suited to small employers, provide good quality, and charge low fees are offered through the marketplace. The marketplace is designed with the flexibility to offer a variety of retirement plan options ranging from IRAs to 401(k)s. The state does not assume any of the legal or regulatory obligations of those plan options; they remain with the plan provider.

Combination or Multi-tiered Program Design Options

The program options outlined in this chart do not restrict the options that states could take to promote retirement security for private-sector workers. With the range of options available, states also have begun to consider combination or multi-tiered approaches to designing retirement savings programs. Some examples of combination models that have emerged include:

[4]David Morse, "The First State Auto IRA Is Up, Running, and Working—So Why Do Some Business Groups Want These Plans to Fail?" *Benefits Law Journal*, Vol. 30, No. 4. http://www.klgates.com/files/Publication/fe23342f-0720-4381-bd59-11c259832e2e/Presentation/PublicationAttachment/6f845bd4-1601-4da7-bebb-159bebc01ea2/From%20the%20EditorThe%20First%20State%20Auto%20IRA%20Is%20Up%20Running%20and%20Working%20So%20Why%20Do%20Some%20Business%20Groups%20Want.pdf. Winter 2017.

[5]See 80 Fed. Reg. 71,938. November 18, 2015. For more information about establishing a state MEP, see: Morse, David E., and Angela M. Antonelli (2017), "Multiple Employer Plans (MEPs): An Overview of Legal, Regulatory, and Plan Design for States (Policy Report, 17-02)," Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University. https://cri.georgetown.edu/wp-content/uploads/2017/08/CRI_MEP_PolicyReport17-2.pdf.

1) A mandatory auto-enroll IRA program plus a voluntary state-sponsored open MEP. If employers without their own retirement plans choose not to participate in the voluntary, ERISA-based MEP or another plan of their choosing, then they would default into the mandatory auto-enroll IRA program (Massachusetts's proposed legislation H. 2973 and S. 515);
2) A mandatory auto-enroll IRA program facilitated by a marketplace (Connecticut's current program); and
3) A mandatory auto-IRA plus a voluntary 401(k) marketplace that includes a voluntary, state-sponsored open MEP (NYC Comptroller's Report Recommendation).

The Case for Multi-state Collaboration: Models Used by State-based 529 College Savings and ABLE Programs[6]

There also are several models, ones based on a multi-state or regional approach, that should be explored for how states can work together to serve more than one state. Although individual states can establish their own state-sponsored retirement savings programs, the consideration of interstate arrangements offers opportunities for states to explore how they can achieve economies of scale to help minimize costs while significantly expanding access to retirement savings options.

The models for multi-state collaboration include:

1) Another state contracts with an established state plan to handle program administration;
2) An interstate alliance jointly structures and administers a program for the states in the alliance;
3) A turnkey private provider develops and makes available a customizable platform that can be used by individual states; and
4) A Section 529 approach lets a state have its own "open" program and allows individual savers and employers from other states to sign up and use its plan.

By joining together, states have the potential to reduce the cost of building a retirement savings platform and offer better services. This is true regardless of which type of state savings plan the states adopt or which method they use to collaborate. However, a multi-state or regional platform is not essential. There is no state that cannot establish a retirement savings plan of some type on its own. However, multi-state or regional plans could make the process easier and more cost-effective. It is an option that any state considering a state plan could explore.

[6] Antonelli, Angela M., and David C. John (2018), "The Benefits of Achieving Economies of Scale in State-sponsored Retirement Savings Programs: The Case for Multi-state Collaboration (Working Paper, 18-02)," Center for Retirement Initiatives, McCourt School of Public Policy, Georgetown University. https://cri.georgetown.edu/wp-content/uploads/2018/06/MultiStateWorkingPaper18-02.pdf.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
ERISA Applicability	No The DOL established a 1975 safe harbor (See 29 CFR 2510.3-2(d); 40 FR 34526 (Aug. 15, 1975)) outlining conditions under which payroll deduction IRAs would not be treated as ERISA plans if provided voluntarily by employers. The conditions set out that employee participation is “completely voluntary” (meaning decision regarding an employee’s enrollment in the program is made by the employee, not the employer) and highlight that limited employer involvement as key to determining whether the employer has not established or maintained an employee benefit plan.	Yes ERISA provides a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, automatic enrollment rules, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections.	Yes ERISA provides a well-established uniform regulatory structure with important consumer protections, including fiduciary obligations, automatic enrollment rules, recordkeeping and disclosure requirements, legal accountability provisions, and spousal protections.	The marketplace is itself not a plan and would not be ERISA-regulated. The plans and other arrangements available to employers through the marketplace could include ERISA-covered plans and other non-ERISA savings arrangements.[7]
Multi-tiered/Combination Options				
Multi-state Options				

[7] 80 Fed. Reg. 71,937 (November 18, 2015) -Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
State Role	• The program must be specifically established pursuant to state law.[8] • The state may delegate implementation and administrative authority (rulemaking, contracting with third-party vendors, and investing, etc.) to a board, committee, or other similar governmental agency or instrumentality of the state.[9] • The state must adopt measures to ensure that employees are notified of their rights under the program and create mechanisms for enforcing those rights.[10] • States are not made guarantors or held strictly liable for employers' failures to transmit payroll deductions safely, appropriately, and in a timely fashion. • States are permitted to adopt timing and enforcement provisions specific to their respective programs.	The state, or designated governmental agency or instrumentality, would be the plan sponsor under ERISA and the named fiduciary and plan administrator responsible (either directly or through contracted agents) for administering the plan, selecting service providers, communicating with employees, paying benefits, and providing other plan services. Fiduciary responsibilities would be assigned to the parties responsible for administration and management of the state MEP.	Similar to MEP, the state would provide a turn-key plan document, recordkeeping, and investment platform and administration through its selected providers. Because each employer would be establishing its own plan, employers could be allowed more flexibility in plan design.[11]	The state would contract with the private sector to establish a program that connects eligible employers with qualifying savings plans available in the private sector market. The state could set standards to determine whether products are suited for small employers, provide good quality, and charge low fees to be included in the marketplace.[12]
Multi-tiered/Combination Options				
Multi-state Options				

[8]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(i).
[9]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(ii).
[10]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(iv).
[11]80 Fed. Reg. 71,938 (November 18, 2015).
[12]80 Fed. Reg. 71,937 (November 18, 2015).

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Employer Participation/ Availability to Other Employers	***Can be mandatory or voluntary***. Any employer not mandated by law to participate that voluntarily chooses to automatically enroll its employees in a state payroll deduction savings program should be careful to avoid regulation as an ERISA-covered retirement plan.	Voluntary. Employers meeting the specified eligibility criteria would be permitted to join the plan.[13]	Voluntary. Employers meeting the specified eligibility criteria would be permitted to adopt the plan.	Voluntary. Employers would be free to use the marketplace and are not required to establish any savings plans for their employees.[14]
Multi-tiered/Combination Options				
Multi-state Options				

[13]80 Fed. Reg. 71,938 (November 18, 2015).
[14]80 Fed. Reg. 71,937 (November 18, 2015).

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Employer Role	Employers would not endorse the program and would act only as a facilitator of information between the IRA provider and their employees. The employer's role must be limited to ministerial activities (collecting payroll deductions and remitting them to the program). Such duties include maintaining records of the payroll deductions and remittance of payments, providing information to the state necessary for the operation of the program, and distributing program information from the state program to employees.[15]	Employers would be required to execute a participation agreement. Each employer that chooses to participate would not be considered to have established its own "single employer" ERISA plan. Participating employers would not act as a plan administrator or named fiduciary. Although employers would have a duty to prudently select the arrangement and to monitor its operation, its role would generally be limited to enrolling employees in the state plan and forwarding voluntary employee and employer contributions to the plan. Only a single Form 5500 Annual Return/Report would be filed. A MEP may allow participating employers to specify employer and employee contributions and maintain unique plan benefit formulas.[16]	Each employer that adopts the prototype sponsors an ERISA plan for its employees would assume the same fiduciary obligations associated with sponsorship of any ERISA-covered plan, but the plan documents for a state-administered prototype plan would designate the state or a state designee to perform many of the functions of a plan's named fiduciary and plan administrator responsible for complying with ERISA. Employers would be able to choose certain features of the plan such as contribution rates.[17]	The employer would establish the savings arrangement, whether it is an ERISA-covered employee benefit plan or a non-ERISA savings arrangement.[18]
Multi-tiered/Combination Options				
Multi-state Options				

[15]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(vii).
[16]80 Fed. Reg. 71,938 (November 18, 2015).
[17]80 Fed. Reg. 71,938 (November 18, 2015).
[18]80 Fed. Reg. 71,937 (November 18, 2015).

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Employer Contribution	Not permitted	Permitted	Permitted	Depends on product
Structure of Accounts	Payroll deduction IRAs (options include traditional and Roth IRAs)	401(k), defined benefit plan, or other tax-qualified retirement savings program	401(k), defined benefit plan, or other tax-qualified retirement savings program[19]	ERISA and non-ERISA covered plans, such as SIMPLE IRAs, payroll deduction IRAs, Roth IRAs, 401(k)s, etc.
Multi-tiered/Combination Options				
Multi-state Options				

[19]Although other types of plans can be offered, such as a SIMPLE IRA, they will be not be covered in detail in this overview.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Contribution Limits[20]	Traditional and Roth IRAs: cannot be more than $5,500 per year ($6,500 for individuals age 50 and older) or the taxable compensation for the year.[21] **Traditional IRA**: Contributions may be fully or partly deductible and generally amounts in the account (including earnings and gains) are not taxed until distributed.[22] Required minimum distribution begins on April 1 of the year after the calendar year in which the account holder reaches age 70.5.[23] **Roth IRA**: Contributions are not deductible and qualified distributions are tax-free. Contributions are permitted after the age of 70.5 and minimum distributions do not apply to employee.[24]	401(k): $18,500 ($24,500 for individuals age 50 and over): annual additions paid to an individual's account cannot exceed $55,000 (or $61,000, including catch-up contributions) or 100 percent of an individual's compensation, whichever is less.[25] Required minimum distribution begins generally on April 1 after the later of the calendar year in which the account holder either reaches age 70.5 or retires.[26]	401(k)[27]: $18,500 ($24,500 for individuals age 50 and over): annual additions paid to an individual's account cannot exceed $55,000 (or $61,000, including catch-up contributions) or 100 percent of an individual's compensation, whichever is less.[28] Required minimum distribution generally begins on April 1 after the later of the calendar year in which the account holder either reaches age 70.5 or retires.[29]	Depends on product — as noted for 401(k)s, SIMPLE IRAs, payroll deduction IRAs, etc.
Multi-tiered/Combination Options				
Multi-state Options				

[20]Figures are for tax year 2018.
[21]https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits.
[22]https://www.irs.gov/retirement-plans/traditional-iras.
[23]https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-required-minimum-distributions-rmds.
[24]https://www.irs.gov/retirement-plans/roth-iras.
[25]https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-401k-and-profit-sharing-plan-contribution-limits.
[26] https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-required-minimum-distributions-rmds.
[27]Although other types of plans can be offered, such as a SIMPLE IRA, they will be not be covered in detail in this overview.
[28]https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-401k-and-profit-sharing-plan-contribution-limits.
[29]https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-required-minimum-distributions-rmds.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Income Limits for Contributions[30]	**Traditional IRA:** There is no income limit. However, if an individual also is eligible to participate in a 401(k) or other employer plan, tax deductions received on contributions are phased based on income. Participants receive no deductions if earning $121,000 or more for those filing jointly and $73,000 or more for those filing as single.[31] **Roth IRA:** Contributions are not allowed for adjusted gross income greater than $199,000 a year for those who are married and filing jointly and $135,000 a year for those filing as single.[32]	401(k): None. However, there is a compensation limit that determines how much of an individual's compensation can be accounted for when determining contribution limits. This figure is $275,000 for 2018.[33]	See MEPs for 401(k)s. SIMPLE IRAs have an income limit of $275,000.[34]	Depends on product (i.e., IRA vs. 401(k)).
Multi-tiered/Combination Options				
Multi-state Options				

[30]Figures are for tax year 2018.
[31]https://www.irs.gov/retirement-plans/ira-deduction-limits.
[32]https://www.irs.gov/retirement-plans/plan-participant-employee/amount-of-roth-ira-contributions-that-you-can-make-for-2018..
[33]https://www.irs.gov/retirement-plans/401k-plans-deferrals-and-matching-when-compensation-exceeds-the-annual-limit.
[34]https://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-seps-contributions.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Automatic Enrollment	Permitted subject to ERISA guidelines.	Permitted. The Pension Protection Act of 2006 made it clear that automatic enrollment is not prohibited by state wage withholding laws. It also provided incentives for employers to use automatic enrollment by creating a safe harbor from (i) fiduciary responsibility for the selection of certain default investments (e.g., target date funds) and (ii) tax non-discrimination testing, provided the employer automatically enrolls employees at a certain rate (starting at 3% and escalating to at least 6%) and makes certain matching or non-matching contributions. Employers are not required to comply with the safe harbors.	Permitted. The Pension Protection Act of 2006 made it clear that automatic enrollment is not prohibited by state wage withholding laws. It also provided incentives for employers to use automatic enrollment by creating a safe harbor from (i) fiduciary responsibility for the selection of certain default investments (e.g., target date funds) and (ii) tax non-discrimination testing, provided the employer automatically enrolls employees at a certain rate (starting at 3% and escalating to at least 6%) and makes certain matching or non-matching contributions. Employers are not required to comply with the safe harbors.	Permitted as noted for 401(k) plans pursuant to the Pension Protection Act of 2006 (as described for MEPs and Prototype Plan). For all other types of plans, permitted subject to ERISA guidelines.
Multi-tiered/Combination Options				
Multi-state Options				

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Employee Opt-out	Participation is voluntary for employees.[35]	Permitted under a plan that allows for automatic enrollment. Employees must be given adequate advance notice and have the right to opt out.	Permitted under a plan that allows for automatic enrollment. Employees must be given adequate advance notice and have the right to opt out.	Permitted under a plan that allows for automatic enrollment. Employees must be given adequate advance notice and have the right to opt out.
Tax & Other Incentives	States may use tax incentives or credits, as long as they ensure that economic incentives are narrowly tailored to reimbursing employers for their costs under the payroll deduction savings programs.[36] States may not provide rewards for employers that incentivizes participation in state programs instead of establishing employee pension benefit plans.[37] Allowable incentives may include disseminating information about the federal Retirement Savings Contributions Credit (Saver's Credit).[38]	Tax credits are permissible to allow small employers to offset part of the costs of starting certain types of retirement plans.[39]	Tax credits are permissible to allow small employers to offset part of the costs of starting certain types of retirement plans.[40]	Tax credits are permissible to allow small employers to offset part of the costs of starting certain types of retirement plans.[41]
Multi-tiered/Combination Options				
Multi-state Options				

[35]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(v).
[36] Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(xi).
[37]Repealed DOL safe harbor language at 80 Fed. Reg. 59,468 (August 30, 2016).
[38]The Saver's Credit is available for individuals making eligible contributions to an IRA or employer-sponsored retirement plan. It is available to those aged 18 or older, not a full-time student and not claimed as a dependent on another person's return who earns less than $31,000 a year as single or $62,000 as married filing jointly. Although the Saver's Credit is non-refundable (and so does not provide a refund), it can be combined with another refundable tax credit, such as the Earned Income Tax Credit, to allow a filer to receive a refund.
[39]80 Fed. Reg. 71,937 (November 18, 2015).
[40]Ibid.
[41]Ibid.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Investment Options	Determination is left to the state[42] or a designated governmental agency or instrumentality, either directly or through one or more contract agents.	Determination is left to the state, or a designated governmental agency of instrumentality, either directly or through one or more contract agents.[43]	The state could designate low-cost investment options and a third-party administrative service provider for its prototype plans.[44]	Depends on product.
Multi-tiered/Combination Options				
Multi-state Options				

[42]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(ii); 80 Fed. Reg. 59,467 (August 30, 2016).
[43]80 Fed. Reg. 71,938 (November 18, 2015).
[44]Ibid.

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Withdrawal Options	**Traditional IRA:** Any deductible contributions and earnings that are withdrawn or distributed are taxable. An individual under age 59.5 may have to pay an additional 10 percent tax unless the withdrawal qualifies for exceptions.[45] **Roth IRA:** No penalties or taxes for a qualified distribution (payment or distribution made 5 years after the first contribution and after age 59.5 or due to disability, made to a beneficiary after death, or to meet the requirement of a first home purchase).[46] All withdrawals of contributions are tax-free. An individual before age 59.5 may have to pay an additional 10 percent tax on withdrawal of accumulated investment income unless the withdrawal qualifies for exceptions.[47]	401(k): Hardship withdrawals are allowed, including for: • Medical expenses for an individual, spouse, or dependent(s) • Purchasing principal residence • Postsecondary education expenses for an individual, spouse, or dependent(s) • Payments to prevent eviction or foreclosure on residence • Funeral expenses • Certain expenses relating to repair to principal residence Generally, withdrawals made before age 59.5 are taxed at 10 percent, unless they fall under exceptions.[48] Plan also may allow hardship withdrawals of employer contributions.	Early withdrawals from IRAs (including SIMPLE-IRA) are permissible at any time without a need to show hardship. Early withdrawals will be included in taxable income and may be subject to a 10 percent additional tax for those under the age of 59.5. Exceptions to the 10 percent tax are made for disability, higher education expenses, first-time homebuyers, and medical expenses. There is an additional tax of 25 percent if withdrawals are made from a SIMPLE IRA plan within the first two years of participation.[49] 401(k) prototypes are covered by the same rules discussed under MEPs.	Depends on product.
Multi-tiered/Combination Options				
Multi-state Options				

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

	Payroll Deduction IRAs	Multiple Employer Plan (MEP)/401(k)	Master and Prototype (Prototype)	Marketplace
Disclosures and Consumer Protection	Does not have the fiduciary consumer protection of ERISA. However, IRS prohibited transaction rules that address conduct between plans and related parties still apply. States can establish their own regulatory framework for effective disclosures, oversight and risk management.[50] The state or governmental agency or instrumentality assumes responsibility for the security of payroll deductions and employee savings.[51]	ERISA's reporting and disclosure requirements, protective standards, and remedies would apply.	ERISA's reporting and disclosure requirements, protective standards, and remedies would apply.	ERISA's reporting and disclosure requirements, protective standards, and remedies would apply to the ERISA plans used by employers through the marketplace.[52]
Multi-tiered/Combination Options				
Multi-state Options				

[50]Repealed DOL safe harbor language at 80 Fed. Reg. 59,469 (August 30, 2016).
[51]Repealed DOL safe harbor language at 29 CFR 2510.3-2(h)(1)(iii).
[52]80 Fed. Reg. 71,937 (November 18, 2015).

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