OCTOBER 23, 2017

AGENDA ITEM 5 INFORMATION ITEM

CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS INVESTMENT BOARD

Options and Recommendations for Program Design and Regulations

Introduction

This agenda item will provide the California Secure Choice Retirement Savings Investment Board ("the Board") with a series of options and recommendations for the design of the California Secure Choice Retirement Savings Program ("the Program" or "Secure Choice"), including staff and consultant analysis of the options; input from stakeholders and the public at large; external research; and examples from other states developing programs similar to Secure Choice. The topics include:

- a. Operational Model: Direct Service Model vs. Employment Development Department ("EDD") as Intermediary Model
- b. "Bundled" vs. "Unbundled" Servicing Approach
- c. Employer Eligibility
- d. Employee Eligibility
- e. Individual Retirement Account ("IRA") Type
- f. Enrollment Periods and Contribution Changes
- g. Default Contribution Rate and Alternative Contribution Elections
- h. Automatic Escalation of Participant Contributions
- i. Communications

The topics included in this agenda item represent actionable decisions to be made by the Board for the purposes of adopting regulations, developing rules for the operation of the Program, and identifying the scopes of work for the external program administrator(s). While this is presented as an information item and no formal vote will be taken during the meeting, staff's intent is to engage the Board in a discussion and obtain the Board's reaction to staff recommendations on each topic. Staff will use this guidance to complete the draft of Program regulations and present those regulations to the Board in subsequent meetings. To the extent a consensus does not emerge or there is otherwise a diversity of views among the Board Members on any given topic, staff will provide multiple options for regulatory language in subsequent Board meetings.

Some topics discussed among the informal stakeholder working groups are not explicitly included, as they lack an actionable element that could be taken by the Board. Secure Choice staff believe the program should be designed and implemented based on foundational principles vital for appropriately serving our future participants and the efficient operation of the Program.

The staff recommendations are informed by core principles Secure Choice staff believe are vital to the success of the Program and its participants:

- Transparency is instrumental to delivering the best service to participants, minimizing administrative fees, and maintaining the accountability of the Program.
- Participant rights to privacy must be protected.
- The Program must be sensitive to the diverse financial lives of its participants and be vigilant in identifying means to accommodate a complex hierarchy of financial needs¹.
- The Program must always consider the diversity of its members, their financial status, geographic location, and financial knowledge in developing the Program.

Attachments:

- Attachment #1 Summary of Staff Recommendations on Program Design Options
- Attachment #2 Oregon Retirement Savings Plan Rules Redline for Board Approval
- Attachment #3 Illinois Secure Choice Fact Sheet

¹ See Mission Asset Fund's *Hierarchy of Financial Needs*, <u>https://missionassetfund.org/hierarchy-financial-needs-introduction/</u>, (December 2015)

The Board must decide if the third-party administrator will interact directly with participating employers or use the Employment Development Department (EDD) as an intermediary.

BACKGROUND

Relevant Code: Government Code §100012(a) compels the Board to design the Program in accordance with best practices for retirement savings vehicles.

Oregon & Illinois Reference Point: The OregonSaves and Illinois Secure Choice programs have a direct service model where the employers send the employee contributions directly to the Third-Party Administrator ("TPA").

Feasibility Study: The market analysis, program design, and financial feasibility study ("feasibility study") conducted for the Board by Overture Financial LLC ("Overture") recommended using a direct service operational model where a single TPA services employers directly without intermediation by EDD in order to facilitate a faster launch, allow for more rapid transmission of participant contributions, and more flexibility in program features, as the EDD model could make implementation of automatic escalation difficult or impossible².

STAFF ANALYSIS

Once a contribution is deducted from an employee's pay, it should be deposited in his or her IRA account as soon as administratively feasible. Federal law requires employers deposit or remit employee contributions to the TPA as soon as is administratively feasible. The deposits must be "timely", but the meaning of timely is not defined by law. However, there is a safe harbor clause for businesses of less than 100 employee that says the business' deposits are timely if made within seven days from the date the contributions were withheld from employee wages. By allowing the employers to remit contributions directly to the TPA, it allows for more expedient deposit of those funds. Utilizing an automated clearing house ("ACH") transfer process allows large volumes of transactions in batches, further expediting the process.

While it may be appealing to employers to allow them to remit the employee contributions to EDD with the relationship already established and other remittances directed there, the increased time and administrative burden make this the less appealing option.

Direct Service Model

Benefits of a direct service model include quicker deposit of employee contributions; elimination of transfer issues; reduced startup costs; more rapid implementation; reduced reporting

² Mohammad Baki, Nari Rhee, et. al., "<u>Final Report to the California Secure Choice Retirement Savings Investment</u> <u>Board</u>" Overture Financial LLC, (March 2016)

requirements; and better flexibility to implement automatic enrollment, automatic escalation of contributions ("auto-escalation"), and withdrawal processing.

Disadvantages include requirement that employers interact with a new entity and the potential confusion among employers if the TPA is changed.

EDD as Intermediary

Benefits include the ability to utilize existing relationships between the employers and EDD and prevention of potential historical data loss if TPA is changed.

Disadvantages include an unnecessary lag in deposits of contributions by directing them first to EDD and increased startup costs associated with development of new systems and controls at EDD.

STAKEHOLDER AND PUBLIC INPUT

Stakeholders were not directly asked to weigh in on this topic but have expressed concerns about participant dollars unnecessarily flowing through an intermediary when they could go directly to the TPA. Employers felt that submitting through EDD would be easier, though focus group participants raised the concern that operating in this fashion may create confusion as to the voluntary nature of the program.

PROGRAM CONSULTANT INPUT

AKF Consulting Group ("AKF") agrees with staff's assessment and recommendation of a direct service model. Based on our experience with analogous state run investment plans, this model would be the most efficient and cost-effective means to ensure timely and accurate processing of financial transactions and account information.

STAFF RECOMMENDATION

The Program should use a direct service model where the employers would send employee contributions directly to the TPA.

The Board has the power and authority to enter into contracts necessary for the administration of the Program. The decision before the Board regards to the structure of those contracts, specifically whether to pursue a "bundled" or "unbundled" approach to providing the services for the Program.

BACKGROUND

Relevant Code:

- Government Code §100002(f) compels the Board to approve an investment management entity or entities, the costs of which shall be paid out of funds held in the trust and shall not be attributed to the administrative costs of the Board in operating the trust.
- Government Code \$100010(a)(5) compels the Board to determine the duties of a program administrator and enter into a contract administrator, or administrators, to operate the Program.

Oregon & Illinois Reference Point: The OregonSaves program utilizes an unbundled approach, with separate companies operating the recordkeeping and investment management portions of the program.

The Illinois Secure Choice program is using a bundled approach and hired one administrator to perform recordkeeping, investment management, and marketing, among other services³.

Relevant External Research: This topic has not been a focus of formal academic or policy research institutions. Therefore, feedback was gathered based on staff experience, conversations with industry professionals and stakeholders, and consultations with the Program's general consultant. In addition, a 2008 report by a private consulting firm the best service model for proactive, technically competent, and more communicative services is the unbundled model.⁴

STAFF ANALYSIS

Some services are naturally bundled, as the administrator is usually responsible for recordkeeping, customer service, and banking, while the investment manager typically includes custody services. However, those two groups of services do not necessarily need to be performed by the same company, and additional services like marketing and distribution may lend themselves to be contracted through separate agencies.

<u>Bundled</u>

Single entity provides program administration and investment management services. In some cases, marketing and distribution services are also delivered by the provider.

³ <u>Request for Proposals - Illinois Secure Choice Program Manager</u>, Appendix A, April 10, 2017

⁴ J.D. Carlson, Paul Carlson, et. al., "<u>Advantages of Unbundled vs. Bundled</u>" Plan Design Consultants, Inc., 2008

Benefits of bundled administration include more streamlined contract management for the Program, as there is only one contract to manage.

Disadvantages of this approach include diminished clarity for fee allocation due to added difficulty in determining exactly what is being charged for each aspect of the services provided.

<u>Unbundled</u>

The Program could enter into individual contracts with separate entities contracted for each service—program administration, investment management, and potentially marketing and distribution.

Benefits of this approach include the ability to select the best-in-class for each service, better clarity on the fees charged for each aspect of services provided, and reduced risk of conflicts of interest.

Disadvantages of this approach include additional administrative burden for staff to manage the contracts, as it would require multiple unrelated vendors.

STAKEHOLDER AND PUBLIC INPUT

The stakeholder groups were not asked to weigh in on this topic.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation of an unbundled approach to contracted services. In addition to the comments provided above, we offer the following observations:

While hiring a single vendor to perform all services lowers the administrative burden for staff with only one contract to manage and one company to interact with, it can be a challenge to:

- Find one entity that can perform all services at the highest level.
- Identify cost subsidies between different aspects of the program.
- Provide direct control or oversight to any subcontractor model used by the provider of services.

Conversely, the unbundled approach provides the Board with control over each contractor with specific service level agreements tied to the services they provide, increased flexibility with program design and administration, and a wider pool of candidate vendors for each specific responsibility, as the contracting firm doesn't have to provide all services in order to respond to an RFP. Handling services in this way also has its challenges as it requires:

- The creation and monitoring of multiple contracts and the interaction with each vendor.
- The need for staff to manage specific expertise.
- An interface between unrelated service providers.

STAFF RECOMMENDATION

The Program should pursue an unbundled approach where the contracted services (i.e., recordkeeping, investment management, etc.) may be contracted out to separate firms.

The Board must adopt regulations that include a clear definition of an eligible employer. Included in that determination is a decision on how and when an employer's employees are counted, what retirement plan coverage exempts an employer from participation, and what mechanism the Program shall use to determine employer eligibility. The Board must also determine the period during which an exempt employer remains exempt.

BACKGROUND

Relevant Code: Government Code §100000(d)(1) defines eligible employers as any privatesector employer with five or more employees that does not offer a workplace retirement plan. The same Code Section excludes the federal government, the state, counties, municipal corporations, or any state instrumentality from eligible employers.

Government Code §100000(d)(2) further defines eligible employers to include the employer of a provider of in-home supportive services ("IHSS") if the Board determines, and both the Director of the California Department of Social Services and the Director of the Department of Finance certify in writing, such inclusion is legally and practically feasible.

Government Code §100012(f) grants the Board the power and authority to determine the eligibility of an employer to participate in the Program if necessary.

Government Code §100032(a-e) prescribes the time at which eligible employers will be required to participate in the Program and provides the Board authority to extend those time limits.

Government Code \$100032(g)(1-2) notes employers that provide an employer-sponsored retirement plan shall be exempt from requirements of the Program and also notes employers who establish a qualified retirement plan at any time shall be exempt from requirements of the Program.

Oregon & Illinois Reference Point: The OregonSaves program requires all employers in the state to certify whether they offer an employer-sponsored retirement plan through an online portal⁵. Oregon employers are sent a form that includes a unique code for each employer either online or, if there's no record of an employer's email address in the state's Employment Department or Secretary of State, through direct mail. Employers are required to provide their tax identification number, zip code, and the access code to log into the portal. OregonSaves staff report that this process takes less than three minutes for employers to complete, on average. Employers who request it can provide their certification through direct mail. Employers who do not respond to the certification request are determined to be participating employers. Exempt

⁵ OregonSaves "<u>Employer Portal</u>" website

employers are determined to be exempt for a three-year period, after which they will be required to file another certificate of exemption or participate in the program.

OregonSaves recently drafted revisions to their regulations to, among other things, further define employers as the business associated with the Business Identification Number or Federal Employer Identification number listed on an employee's W-2. The revisions would also add definitions for "worker leasing companies," companies that lease workers to secondary employers. If adopted, the regulations would define the "client employer," in other words, the secondary employer that leases a worker, as the employer of record for purposes of the program. Those employers, if eligible for the program, would be required to register by the same time as employers with 5-9 employees.

The Illinois Secure Choice program will verify employer eligibility using the state's existing quarterly employer payroll tax forms. The state amended the form to include a checkbox where employers can certify if they are exempt from the $program^{6}$.

Feasibility Study: The feasibility study included the recommendation that employer eligibility is determined annually by calculating the average number of employees as reported in the DE-9C quarterly contribution and wages report submitted by employers to EDD. Overture recommended the Program use the average number of employees reported each month for the third quarter (ending September 30) of each year to determine an employer's number of employees.

The same study included the recommendation that employers who currently offer an employer sponsored retirement plan need only one California employee to be eligible for their plan to avoid the requirements of the Program.

Some participating employers may be determined to be ineligible in later years due to loss of employees. For those employers, Overture recommended the Program allow those employers to continue participation through the remainder of the calendar year and allow those employers to voluntarily permit continued contributions for participating employees, but could no longer permit enrollment of new employees into the Program.

STAFF ANALYSIS

The Board should adopt eligible employer definitions that minimize any potential administrative burden for employers, utilize any existing legal or regulatory definitions, and is easily administered by the Program. The regulatory definition and processes should ensure uniform standards for employers and add little to no additional burdens on employers, other government agencies, or any other parties.

Mechanisms to Determine Eligibility: There are at least two distinct methods the Board could pursue to determine employer eligibility: collect data already reported by employers or utilize a simple employer certification process whereby employers certify their eligibility. While there are existing reporting mechanisms that capture the number of employees working for California employers, there does not appear to be complete existing mechanism for the Program to determine if California employers provide a workplace retirement plan. It is not clear to staff that

⁶ <u>Illinois Department of Revenue Form IL-941</u>

the Board can avoid establishing a process that requires the Program to solicit some affirmative acknowledgement from California employers.

Number of Employees: Employers are already required to submit a report on their individual employee wages each quarter through the DE 9C report⁷ submitted to EDD. The DE 9C includes a field for employers to list the number of total employees who worked or received pay subject to state unemployment insurance for each month of a given quarter. Use of this quarterly report would be less-burdensome for employers, as it would require no additional employer actions to determine eligibility under the mandate.

Because the number of employees reported on the DE 9C represent the cumulative number of employees employed during each month, instead of a count of the employees working on a given date, the use of those fields could result in a greater number of employers eligible for the Program than would be otherwise based on a point-in-time count of their employees. In addition, employers are not required to complete the fields, so use of those data may result in the Program determining some employers erroneously ineligible for the Program.

Retirement Plan Coverage: There do not appear to be any complete existing mechanisms available to the Program to determine whether an employer provides a workplace retirement plan. While the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) offers a public portal for researching its database of Forms 5500 (required filings for ERISA plans), it does not include certain plan types that would qualify an employer for an exemption under the Secure Choice statute. The options available to the Program to determine whether an employer provides a retirement plan will likely require some manner of soliciting certification by employers.

The Program could develop an employer certification form process similar to OregonSaves. Such a process could allow employers to assert whether they are eligible for the Program—both based on the total employees hired by that employer and whether or not the employer provides a retirement plan. While the Program could develop a process that requires little to no administrative burden for employers (online and paper options), use of such a form would require the Program to distribute the certification form or web link to all employers in the state likely through EDD.

Exemption Period: An employer may be eligible for the Program one year, but become exempt in subsequent years due to either reducing the number of their employees or offering a retirement plan. The Program will have to determine the period during which an employer is exempt.

One year should be the minimum length of time for an exemption period, as anything less would not coincide with the plan year and open enrollment and could cause confusion among employers. Some stakeholders have expressed a preference for a one year exemption period, as it would likely allow for greater participation than a longer period. Some stakeholders expressed a preference for a longer exemption period such as three years, suggesting it would mitigate administrative burdens for employers.

⁷ California Employment Development Department website

The Board should consider administrative burdens for employers, operation of the Program, and the means of allowing maximum participation by employers and their employees. A one year exemption period would allow for the employer eligibility verification to coincide with open enrollment and the beginning of each Program year. It would also allow for maximum participation among the eligible population. While a participating employer can discontinue participation at any time, a one year exemption period would better ensure employers can discontinue participation if they become exempt. A one year exemption period would likely provide some additional costs to the Program, as it would require more regular distribution, collection, and analysis of exemption certifications by the TPA.

A three-year exemption period would reduce the frequency of communications from the Program to employers and reduce the need for the TPA to collect and analyze exemption certifications. However, a three-year exemption period would reduce the likelihood that eligible employers would participate in the Program. A three-year exemption period could create administrative complexity for the Program, as it would be required to track the year during which each employer certified exemption.

Given that the existing mechanism to determine if an employer provides a retirement plan is incomplete in the context of the Secure Choice statute's exemption, the Board will likely need to rely on some form of affirmative employer certification. The alternative would be to operate the Program without knowing which employers are subject to the law's mandate, thereby functionally eliminating the mandate and creating a quasi "opt-in" environment for employers.

STAKEHOLDER AND PUBLIC INPUT

The informal stakeholder working group members reached some consensus on some aspects of eligible employer definition. For items lacking consensus, the range of opinions is included.

Employee Count: Stakeholders agreed that the Program should utilize any existing definitions, reporting, counts, mechanisms, etc. to determine employee count for determining when/if an employer is mandated to participate in the program. (i.e. DE 9C quarterly tax reports). Some employer working group members suggested the Program could determine employer eligibility using an average of an employer's employee count, or some other statistical measurement, to avoid employers with highly seasonal workforces from participating.

Continued Participation: Once an employer is participating in the Program, it should be allowed to continue participation for the remainder of that calendar year even if its workforce drops below five employees.

Retirement Plan Coverage: An employer should be exempt from the mandate if it offers a "qualified" retirement plan. Employees of an employer currently providing a qualified plan should not be allowed to participate in Secure Choice in lieu of participating in their employer plan. If an employer adopts its own qualified plan after mandated participation in Secure Choice, the Program should offer options and defaults as to how to handle those accounts such as rolling the funds into the new employer plan or leaving them with Secure Choice with no additional contributions. The employee would retain the right to leave accumulated funds with Secure Choice or rollover to another retirement vehicle at any time.

Exemption Period: Once exemption from the mandate is determined, stakeholders agreed that it remains in effect for a defined period of time unless the employer elects to participate sooner (assuming it is subject to the mandate with its current employee count).

Some employee working group members expressed a preference for a one-year exemption period, whereas some members of the employer working group recommended a three-year exemption period. Working group members also recommended this process coincide with other open enrollment periods, such as open enrollment periods for the purchase of health insurance.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendations regarding the definition of eligible employers. We understand that these definitions exclude certain categories of people and recommend that the Board consider future opportunities to include them in the program. In addition, we believe that the Program Administrator will be integral in ensuring the employer certification process is not burdensome for employers.

STAFF RECOMMENDATION

The Program should use existing Unemployment Insurance Code Sections as part of the definition of eligible employer [Unemployment Insurance Code $\frac{601-611}{2}$ and $\frac{675-687.2}{2}$].

Employers shall certify their exemption from the Program using a form prescribed by the Program—either through an amendment to existing reporting forms or through development of a new online form which would also be available in paper format. Employers that do not affirmatively certify their exemption from the Program shall be determined to be eligible employers and will be contacted by the TPA to enroll in the Program. Employers shall have an additional opportunity during enrollment to certify exemption. In developing this process to identify exempt employers, the Program shall make every effort to minimize effort required of employers and consider the experiences of Oregon and Illinois as those states implement their distinct approaches.

For the purposes of employer outreach, the Program should use data reported to EDD by employers through the DE 9C form. The Program should use the data to time communications with employers on deadlines to enroll in the program, as those deadlines will vary depending on an employer's size. The Program should use data from the DE 9C form submitted for the 3rd quarter (ending September 30) of each year to allow the Program sufficient time to initiate communications on the subsequent program year beginning January 1. The Program should evaluate potential costs and complications, if any, of calculating the average number of employees reported for each month in the report to determine an employer's number of employees.

Exemption from the Program shall remain in effect for one year.

Employers of IHSS providers should be included as eligible employers if the Board determines it is legally and financially feasible per statutory requirements.

The Board must adopt regulations that include a clear definition of employee eligibility, including, but not limited to, deciding whether there is a minimum age necessary for participation, decide if an employee must work a minimum number of hours to participate, and consider how the Program will verify an individual's identity.

BACKGROUND

Relevant Code: Government Code §100000(c) identifies eligible employees as a person who is employed by an eligible employer. Employees covered under the federal Railway Labor Act and employees whose employer contributes to a Taft-Hartley pension trust fund are excluded from the definition.

Government Code §100012(f) provides the Board authority to determine the eligibility of an employee to participate in the Program, if necessary.

Government Code §100012(k) provides the Board authority to evaluate a process allowing an individual or an employee of a nonparticipating employer to participate in the Program.

Government Code §100000(d)(2) and §100046(a) would allow the Board to include providers of in-home supportive services as eligible employees if the Board finds such an inclusion to be legally and practically feasible.

Feasibility Study: In the feasibility study, Board consultants Overture Financial LLC recommended the Program define eligible employees as all employees as defined by the Internal Revenue Service ("IRS")—those who receive a W-2 from their employer—**and** whose pay is subject to California Unemployment Insurance taxes.⁸ The value of the UI definition is nearly all employees are subject to UI taxes and their wages are already reported to EDD.

In the feasibility study, Overture also recommended the Program use Social Security Numbers ("SSN") or Individual Tax Identification Numbers ("ITIN") to verify the identity of participants. Because some members of the employee population will be undocumented immigrant workers, Overture recommended the TPA verify the identity of a new enrollee. If the TPA discovers the identity is invalid, or does not match the SSN or ITIN provided, it should contact the employee directly rather than the employer to avoid potentially exposing the individual as an undocumented worker.

The same study included recommendations the Program establish a minimum age of eighteen.

⁸ Supra note 2

Oregon & Illinois Reference Point: The OregonSaves program has adopted regulations defining "compensation" as "W-2 wages, as defined in <u>26 Code of Federal Regulations 1.415(c)-</u> <u>2(d)(4)</u>" and "employment" as any employment subject to the state's unemployment insurance.⁹

Individuals must provide the OregonSaves program either an SSN or ITIN to participate.¹⁰

OregonSaves and Illinois limit participation to employees age eighteen and above.¹¹

OregonSaves recently drafted revisions to their regulations to, among other things, further clarify how employees of worker leasing companies, companies that provide workers to secondary employers, should be considered for program eligibility. Under the proposed regulations, employees leased to a secondary employer would be considered employees of that secondary employer for the purposes of the program, if working on a non-temporary basis. Employees who are not leased to a secondary employer would be considered to be employees of the worker leasing company.

Similar to Oregon, Illinois will reference the state's unemployment insurance code in defining employee eligibility.

STAFF ANALYSIS

The Board must consider a number of factors in defining employee eligibility, including ease of application, existence of reporting mechanisms that could be utilized to enroll participants, cost of administration, fairness of plan rules, and addressing the unique sensitivities of the eligible population.

To ensure simple and cost-effective administration of the Program, the Board should adopt an eligible employee definition that 1) already exists in statute and 2) is already reported by employers.

Definition of Eligible Employee: Employers already regularly report their employees and their employees' wages through quarterly tax reports and deduct contributions to employees for unemployment insurance taxes, which apply to essentially all employees in the state. The reporting makes no distinction between full-time,part-time, or seasonal employees. Given the broad definition of employees under Unemployment Insurance Code, the Program should utilize that definition to define "employee" and define "eligible employee" as "any employee working for an eligible employer," as stated in Government Code.

Minimum Age: Because a minor's finances are controlled by their parent or guardian, the Program should limit participation to employees ages eighteen and above.

Identity Verification: The Program should establish processes that remove employers from any procedures necessary to verify a participant's identity to avoid unnecessary administrative burden and to avoid the potential for exposing personal or sensitive circumstances of the worker

⁹ Oregon Retirement Savings Plan Final rules

¹⁰ *Ibid*.

 $^{^{11}}$ Ibid.

to their employer. The Program should allow a participant to verify their identity using either an SSN or ITIN.

Minimum Hours Necessary to Participate: Some working group members suggested the Program require that employees work a minimum number of hours to be eligible for the Program. Many employers require their employees work a minimum number of hours, in addition to other eligibility criteria, to participate in their employer-sponsored retirement plans.

Requiring employees to work a certain amount of hours to participate in the Program would require either the Program or participating employers to track the hours worked by each eligible employee. Such a requirement would likely place undue administrative burden on employers and could require unnecessary administrative costs for the Program, in addition to disenfranchising workers who subsist on a patchwork of part-time jobs.

Each employee account brings additional marginal costs to the Program, however those costs are offset by participant contributions. Part-time or temporary workers may be more likely to make relatively little, or inconsistent, contributions, impacting cost efficiency. However, establishing a time lag between enrollment and initial contributions could both serve to alleviate the risks associated with including part-time or temporary workers.

In-Home Supportive Service Providers: Statute compels the Board to evaluate whether IHSS providers could be included as eligible employees. The goal of Secure Choice staff is to define the eligible employee population as broadly and consistently as possible. However, there are outstanding questions regarding who the employer of record is for IHSS workers and, because code excludes governmental entities from the eligible employer population, whether that employer is considered to be an eligible employer. If the Board determines the employer of record to be the recipient of care, it may be likely that the overwhelming majority of IHSS providers will not be eligible for the Program, as most recipients of care do not employ more than five employees.

Secure Choice staff have been researching IHSS eligibility with the California Department of Social Services, unions representing IHSS workers, advocacy organizations, and counsel. Secure Choice staff will continue to research the matter and will provide the Board with recommendations on how to proceed. Furthermore, if the Board determines such inclusion to be legally and practically feasible, IHSS workers could not be included in the Program until both the California Department of Social Services and the Department of Finance certify in writing that such inclusion is permitted.

STAKEHOLDER AND PUBLIC INPUT

The stakeholder working groups reached consensus on a number of topics related to eligible employee definition:

• Members recommended the Program should utilize any existing definitions, practices, and reporting to determine eligible employees. Some members recommended defining eligible employees as any who receive a W-2, with wages subject to California Unemployment Insurance, and reportable as employees to the EDD such as the DE 9C

quarterly tax reports—practices similar to the OregonSaves program. Members suggested this would simplify the employer's administrative duties and provide a clean and clear definition as to who is an eligible employee.

- Members also recommended eligibility should be limited to those age eighteen and over to remove any potential complications regarding participation by minors. There were some opinions expressed on offering the program to all employees regardless of age, however they recognized such inclusion could create difficulties for the Program and requested the Board explore ways to include all employees, regardless of age, as the Program matures.
- Members recommended business owners should be eligible to participate if they are also an employee.
- Most members recommended the Program accept either an SSN or ITIN to verify a participant identity.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation of the definition of eligible employees. We understand that these definitions exclude certain categories of people and recommend that the Board consider future opportunities to include them in the program. In addition, we believe that the TPA will be able to establish processes to validate a potential participant's identity which will protect the individual's privacy and will not be burdensome for employers.

STAFF RECOMMENDATIONS

Utilize existing Unemployment Insurance Code ("UIC") definitions to define "employee" (UIC $\frac{621-623}{2}$ and $\frac{629-657}{2}$).

Employees must earn wages subject to Unemployment Insurance taxes and receive a California W-2 from their employer to be eligible for the Program.

The Program should limit participation to employees age eighteen and above.

The Program should accept either a Social Security Number or Individual Tax Identification number to verify an employee's identity.

The TPA should resolve any identity verification issues directly with the employee and remove the employer from the process to avoid unnecessary administrative burden and ensure that no personal or potentially sensitive information is shared with the employer.

The Program should not require a minimum number of hours worked for participation, as it would result in unnecessary administrative burden for employers and reduce the eligible population.

The Program should include providers of in-home supportive services among eligible employees, if determined to be legally and practically feasible per statutory requirements.

Item 5e: IRA Type (Roth, Traditional)

PROGRAM DESIGN ELEMENT DECISION POINT

The Board may include one or more payroll deduction IRA arrangements. The program may offer a Traditional IRA (pre-tax contributions), Roth IRA (post-tax contributions), or both at launch. If both are offered at launch, an additional decision needs to be made as to which type will be utilized as the default.

BACKGROUND

Relevant Code: Government Code §100008 notes the Program shall include one or more payroll deduction IRA arrangements.

Oregon & Illinois Reference Point: The OregonSaves and Illinois Secure Choice programs currently offer only a Roth IRA. Staff at both programs are currently researching the possible inclusion of a Traditional IRA at a later date.

Feasibility Study: The feasibility study recommended using a Roth IRA as the default option¹².

STAFF ANALYSIS

Traditional IRA:

- Allows individuals to contribute pretax income towards investments that can grow taxdeferred; no capital gains or dividend income is taxed until it is withdrawn.
- Individual taxpayers are allowed to contribute 100% of any compensation earned up to a specified maximum dollar amount determined annually by the IRS. For 2015, 2016, and 2017, the contribution limit is \$5,500 with an additional \$1,000 of contributions available to those participants aged 55 or older.
- Contributions may be tax-deductible depending on the taxpayer's income, tax-filing status and other factors.
- When taking distributions from a traditional IRA, the funds are treated as ordinary income and are subject to income tax. Distributions can be taken as early as age 59 ¹/₂ with required minimum distributions ("RMD's") at age 70 ¹/₂. Funds removed prior to full retirement eligibility incur a 10% penalty in addition to the applicable income tax rate.

Roth IRA:

- Allows individuals to contribute after-tax dollars.
- Same contribution limits as a Traditional IRA.
- Contributions are not tax deductible since they are made with after-tax dollars (although the Saver's Credit provides an additional tax credit of 10% to 50% of the contribution, depending on income and life situation).
- Distributions equal to the amount contributed to the account can be withdrawn at any time without penalty, however withdrawals of any investment interest earned on

¹² Supra note 2

contributions prior to 59 $\frac{1}{2}$ will be taxed as income and subject to a 10% early withdrawal penalty.

- Contributions can be made after the participant reaches the age of 70 ½ provided they have earned income.
- No RMD's within Roth IRAs.
- There are eligibility restrictions on Roth IRA participation depending on tax filing status and income level.

This table from <u>the IRS</u> shows the eligibility and contribution limits for participation in a <u>**Roth**</u> <u>**IRA**</u>:

If you're filing status is	And your modified AGI is	Then you can contribute
married filing jointly or qualifying widow(er)	< \$186,000	up to the limit
	\geq \$186,000 but < \$196,000	a reduced amount
	≥ \$196,000	zero
married filing separately and you lived with your spouse at any time during the year	< \$10,000	a reduced amount
	≥ \$10,000	zero
single, head of household, or married filing separately and you did not live with your spouse at any time during the year	< \$118,000	up to the limit
	\geq \$118,000 but < \$133,000	a reduced amount
	≥ \$133,000	zero

Whether a Roth or Traditional IRA is more beneficial to the participant depends on a multitude of factors, including:

- Tax bracket and current income of the participant.
- Expected tax rate at retirement.
- Need or desire for penalty-free access to savings pre-retirement.
- Personal preference.

In general, lower participant current income and a longer investment horizon suggests an advantage to participating in a Roth IRA, since there is no (or a reduced) benefit to the reduction in taxable income provided by a Traditional IRA. Additionally, since Roth contributions are made with after-tax dollars, both the contributions and earnings can be withdrawn tax free in retirement.

If a participant decides they do not want to participate in the Program after being automatically enrolled, or otherwise withdraw their contributions, the contributions are treated as if they were never made as long as the distribution occurs by the due date of their tax return for the year in which they made the contribution(s). The withdrawal of contributions is tax free, but any earnings on the contributions must be reported as income for the year in which they were earned.

An argument in favor of the Traditional IRA approach is the inherent incentive for participants to leave retirement savings invested in the account and not access the funds for shorter term needs. This structure strongly encourages participants to commit to treating the IRA as the long-term investment account that it is intended to be. However, as strongly suggested by several employee and consumer stakeholders groups, access to funds for emergency or other high priority needs may be paramount for many lower income families that the Program seeks to serve. As referenced in the introduction to this document, the Program must be sensitive to the diverse financial lives of its participants and be vigilant in identifying means to accommodate a complex hierarchy of financial needs¹³.

Proponents of a Traditional IRA option also argue that it would allow individuals earning above the Roth income cap (\$133,000 per year) to participate in the Program, where those individuals could not participate via a Roth IRA account structure. While data on this sub-group is not available, staff assumes that there would be only a small number of such individuals among the employers subject to the law's mandate and that many of them would be likely to have savings arrangements established on their own.

There is no clear administrative delineation to the Program or cost advantage to the participant of offering either a Roth or Traditional IRA, though offering both at launch would add complexity to program participation at both the employer and employee level. It would add operational complexity for the participating employers by requiring them to track both pre- and post-tax contributions for various employees, and would require an additional level of outreach and education to the participants and potential participants so that the advantages and disadvantage of both account types are clearly understood.

STAKEHOLDER AND PUBLIC INPUT

There is general consensus among the stakeholder working groups that the Program should start by offering a Roth IRA as the default option, and explore the feasibility of offering a Traditional IRA as a separate option either at launch or in the future.

The employee stakeholder group expressed a strong preference for participants to have penaltyfree access to their retirement savings before reaching retirement age, if financially necessary, which was the primary driver of their support for a Roth IRA account type. EARN, a leading asset-building organization and member of the employee working group, surveyed its members on a number of topics including the importance of having penalty-free access to savings for cases of emergency. EARN's survey found a clear majority (74%) of members and saver respondents would prefer to be able to withdraw their retirement savings before age 59 ¹/₂.

Representatives of a large number of payroll services companies and their industry associations expressed a strong preference for the Program to offer a Roth account only. They reported that offering both account types would significantly increase processing complexity for employers and their payroll service providers.

¹³ Supra note 1.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation on the use of Roth IRAs as the default retirement savings vehicle in the Secure Choice program. We believe this is the appropriate default account structure for employers and employees given the following:

- Employees can make after-tax payroll deduction contributions to Roth IRAs (parenthetically we note that the contribution levels are the same for Roth and Traditional IRAs).
- All earnings grow tax deferred and are tax-free if contributions are withdrawn at or after age 59-1/2, or for another qualified distribution.
- There are no required mandatory distributions from Roth IRAs.
- Individuals can access their own contributions if necessary, prior to age $59 \frac{1}{2}$.
- There are special provisions available in Roth IRAs for withdrawing contributions and earnings to purchase a first home or to fund higher education.

We acknowledge there is a small population of employees who may not be eligible for a Roth IRA and thus would benefit from a Traditional IRA. For this reason, we believe it would be prudent to offer the choice of both a Roth IRA and a Traditional IRA, if feasible, in the Secure Choice launch. We understand that adding a Traditional IRA could impact the complexity and potentially the timing of the program launch. Beyond the administrative challenges, we further understand, there could be a significant increase in the level of education required for employees to understand the differences between Roth and Traditional IRAs. In order to validate or eliminate these concerns, we suggest that the Program Administrator RFP ask potential TPAs to include a work plan and feasibility assessment for implementing a Traditional IRA in addition to a Roth IRA.

STAFF RECOMMENDATION

Offer a Roth IRA as the sole option at program launch and, if at any time the Program offers a Traditional IRA, make the Roth IRA the default option.

Explore the feasibility of offering a Traditional IRA at a later date.

The Board shall determine how often a participant may make changes to their contributions and whether participants should be allowed to enroll at any time or only via a structured open enrollment period. Additionally the Board must determine how often employees who previously opted out should be given the opportunity to recertify their intent to opt-out or otherwise be enrolled.

BACKGROUND

Relevant Code: Government Code §100032(f)(2) compels the Board to designate an open enrollment period at least once every two years during which eligible employees that previously opted out of the Program are given the employee information packet with the disclosure and optout forms, for the employee to enroll in the program or opt out of the program by making a notation on the opt-out form.

Government Code §100032(k)(3) notes a participating employee may elect to opt out of automatic escalation and set his or her contribution percentage rate at a level of their choosing.

Oregon & Illinois Reference Point: The OregonSaves program automatically enrolls all covered employees unless they opt out. The program allows employees who previously opted out to join at any time. Once an employee has opted-out of the program, they are out until they ask to join or they move to another participating employer. When an employee moves to a new eligible employer they will restart the automatic enrollment process again. The Program also allows participants to adjust their contribution levels no more frequently than once per month. The employer is required to initiate the employee contributions or changes as soon as administratively practicable, not to exceed 30 days from receipt of request to participate.

The Illinois Secure Choice program will hold an annual open enrollment period during which employees who previously opted-out can enroll in the program. Newly-hired employees will be enrolled at the time they are hired. Participants are allowed to change their contribution amounts, or cease contributions, at any time¹⁴.

Feasibility Study: The feasibility study found that focus group participants were split as to whether an open enrollment period would be more or less administratively burdensome than allowing enrollment at any time¹⁵.

STAFF ANALYSIS

In general, open enrollment periods for benefits programs occur annually in the fall, with January 1 implementation dates. It would follow best practice to include an open enrollment period for

¹⁴ Supra note 3

¹⁵ Supra note 2

Secure Choice along a similar timeline with all other benefits programs. Aligning with other open enrollment periods would ensure that employees are focused on the benefit elections for the upcoming year, and increases the likelihood of employers providing time and resources for the employees to research and make their selections.

An annual recertification of employee intent to opt out of the program should be designed as a simple notation on a form, similar to an indication of non-participation in any other benefits program that is required annually, such as employer health coverage.

The employee should, however, retain the right to initiate participation, or to make contribution changes, any time throughout the year. New employees are able to initiate program participation at the time of hire, so allowing current employees the opportunity to begin participation outside of an open enrollment period, or make changes no more frequently than once per month should not cause any undue administrative burden on the employer.

STAKEHOLDER AND PUBLIC INPUT

The employer stakeholder group requested contribution changes be implemented at the beginning of the next quarter, assuming an appropriate payroll cutoff date is met. The election of a contribution change shall be made through the employee account with the TPA who will then communicate the change to the employer.

While the employee group seemed comfortable with the quarterly change model proposed by the employer group, they expressed the preference that these changes were able to be made on a monthly basis.

The employer stakeholder group prefers to allow employee enrollment in the program after they initially opted out only through an open enrollment period. They expressed comfort with this being an annual process. The employee stakeholder group believes the employee should retain the right to enroll at any time throughout the year, similar to making a contribution change.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation of allowing employees to enroll in the program at any time. We believe that the Program Administrator will be able to establish an enrollment process that will not create an unnecessary burden on employers. We further agree that annual re-education of the benefits of Secure Choice, during typical open enrollment periods, will be beneficial to employee participation.

STAFF RECOMMENDATION

Allow participants the opportunity to change their contribution percentage no more frequently than once per month.

Provide employees the opportunity to enroll in the Program at any time throughout the year.

Allow a change to the participant's contribution amount to occur as soon as administratively possible, but not to exceed 30 days from receipt of the request to change.

Direct employers to annually provide employees the information packet during an open enrollment period to provide them with an additional opportunity to participate, or to recertify their request to opt out of the program.

The Board may adjust the default contribution rate by regulation to no less than 2% and no more than 5%. The Board may also have to consider establishing a minimum contribution amount for better cost efficiency and more rapid financial sustainability for the Program.

BACKGROUND

Relevant Code: Government Code §100032(i-j) establishes a default contribution rate of 3% of wages for participants and grants the Board the ability to adjust that default contribution rate through regulation to a minimum of 2% and a maximum of 5%.

Oregon & Illinois Reference Point: Both the OregonSaves and Illinois Secure Choice programs have default contribution rates of 5% of compensation.

OregonSaves is proposing to amend their existing regulations to require alternative contribution rate elections to be made in whole dollar amounts. The regulations would set a minimum contribution of \$1.00.

OregonSaves' amended regulations would also allow for participants to make non-payroll contributions to their OregonSaves account.

Feasibility Study: The feasibility study found no statistical difference in likely participation between a 3% and 5% default contribution rate¹⁶. In other words, employees are not expected to opt-out if the default rate is set at 5% as compared to 3%. The same study found about one-fifth (18%) of respondents reported they would participate in the program, but select a lower contribution rate.

Relevant External Research: Participants would be unlikely to accrue sufficient retirement savings for a secure retirement if they contributed only 3% to 5% of pay over the long term, however a 5% default contribution rate would result in significantly greater savings.

A study published by the Pew Charitable Trusts earlier this month found employees would be almost equally as likely to participate in the Program under a 3% or 6% default contribution rate¹⁷. The study found 10% of eligible employees initially reacted to the Program by saying they would not opt out under a 6% default contribution rate, whereas 9% would opt out under a 3% default rate¹⁸. Under a 3% rate, 60% of eligible employees would stay in the Program as is, 1% would lower their contribution rate, 13% would increase their contribution rate, and 16%

¹⁶ Supra note 2

¹⁷ John Scott, Andrew Blevins, et. al., "<u>Worker Reactions to State-Sponsored Auto-IRA Programs</u>" The Pew Charitable Trusts, (October 2017)

¹⁸ Ibid.

reported they don't know what they would do¹⁹. Under a 6% default rate, 53% of employees would stay in the Program as is, 6% would lower their default rate, 11% would increase their contribution rate, and 20% don't know what they would do²⁰. After hearing more details about the program, there was no difference in participation rates between those who received the 3% or 6% default rates.²¹

A separate study by Pew based on a survey of small to midsized business owners found majority support for both contribution rates. When asked about individual features of auto-IRA plans, 81% supported a 3% rate of contribution and 69%, over two-thirds, supported a 6% contribution default.²² After hearing more details about the program, there were no differences in overall support between those who received the 3% or 6% default rates.²³

A study conducted for the Oregon State Treasury estimated expected income replacement under a 3% and a 5% contribution rate sustained over the career of a typical worker who lacks access to a workplace retirement plan. For those workers who begin saving from ages 25 to 62, they could replace 16.9% of their income under a 5% contribution sustained over the course of their career, whereas the same worker would be expected to replace 10.1% of their income under a 3% contribution²⁴.

Another study compared the expected reduction in retirement savings shortfalls for workers contributing either 3% or 6% of compensation to a retirement plan. The study found workers age 35-39 would reduce their retirement savings shortfall by 17.9% using a 6% contribution rate, whereas the same workers would reduce their retirement savings shortfall by only 10.6% under a 3% contribution rate²⁵.

In 2015, the Center for Retirement Research at Boston College conducted a market analysis and feasibility study for the Connecticut Retirement Security Program, an initiative similar to the Secure Choice Program²⁶. The study found no significant difference in participation rates for employees enrolled at a 3% versus a 6% default contribution rate.

Other external research has demonstrated that higher default contribution rates are not correlated with diminished participation, but rather a greater prevalence of alternative contribution elections²⁷.

¹⁹ Ibid.

²⁰ *Ibid*.

²¹ *Ibid*.

 ²² The Pew Charitable Trusts, "<u>Employer Reactions to Leading Retirement Policy Ideas</u>," July 2017
²³ *Ibid.*

²⁴ Geoffrey Sanzenbacher and Anek Belbase, "<u>Initial Contribution Rates and Automatic Escalation</u>" Center for Retirement Research at Boston College, (June 2016)

²⁵ Jack VanDerhei, "<u>Auto-IRAs: How Much Would They Increase the Probability of 'Successful' Retirements and Decrease Retirement Deficits? Preliminary Evidence from EBRI's Retirement Security Projection Model," Employee Benefit Research Institute, Notes 36, no. 6 (2015): 11–29</u>

 ²⁶ Anek Belbase and Geoffrey Sanzenbacher, "<u>Report on the Design of Connecticut's Retirement Security Program</u>"
Center for Retirement Research at Boston College (December 2015)

²⁷ John Beshears, Shlomo Benartzi, et. al., "<u>How Do Consumers Respond When Default Options Push the</u> <u>Envelope?</u>" Voya Behavioral Finance Institute for Innovation, (October 7, 2017)

Another study on the effects of default settings on 401(k) participant behavior found 6% to be the most commonly-selected contribution rate among individuals who chose their own rate.²⁸ A report from Vanguard using their client database found 44% of plan sponsors use a 3% default contribution rate while 33% use 5% or higher²⁹. The trend is toward a higher default rate: in 2007, 56% used 3% and only 14% used 5% or higher³⁰.

STAFF ANALYSIS

Individuals are more likely to adhere to the default contribution rate settings than to select their own rate^{31,32} so it is important the Board consider the proper balance between ensuring participants will accrue meaningful retirement savings through the Program and the impact of default program settings on participation in general.

Benefits of a higher default contribution rate include:

- A greater likelihood of the participants accruing meaningful retirement savings.
- Reduced administrative costs.
- More rapid financial sustainability for the program.

Potential challenges of a higher default contribution rate could include:

- Potential financial shocks to participants.
- Diminished participation (estimated to be small or statistically insignificant).

A lower default contribution rate could result in diminished retirement security outcomes for participants, higher administrative costs for the Program, and relatively less rapid financial sustainability for the Program. While it is possible that opt-out rates might be lower with a lower default contribution rate, several research studies cited above suggest that this would be minimal.

Program financing and cost-efficiency are highly sensitive to the default contribution rate, and contributions in general³³. The financial feasibility study conducted by the Board in 2015-16 found a 3% default contribution rate would nearly double startup costs for the Program and require administrative fees as much as 150% higher than would be necessary under a 5% default rate³⁴.

Because each participant would add an additional marginal cost to administer the Program, it may be necessary to establish a minimum contribution amount to ensure financial sustainability. The OregonSaves program established a minimum contribution of 1% of compensation³⁵. The NEST program in the United Kingdom, a government-operated defined contribution plan for

²⁹ Stephen Utkus and Jean Young, "<u>How America Saves 2017</u>," Vanguard, 2017
³⁰ *Ibid.*

²⁸ James Choi, David Laibson, et. al., "<u>For Better or For Worse: Default Effects and 401(k) Savings Behavior</u>" National Bureau of Economic Research, (December 2001)

³¹ Brigitte Madrian and Dennis Shea, "<u>The Power of Suggestion: Inertia in 401(k) Participation and Savings</u> <u>Behavior</u>" National Bureau of Economic Research, (May 2000)

³² John Beshears, James Choi, et. al., "<u>Defined Contributions Savings Plans in the Public Sector: Lessons from</u> <u>Behavioral Economics</u>" National Bureau of Economic Research, (September 2010)

 $^{^{33}}$ Supra note 2.

³⁴ *Ibid*.

³⁵ Oregon Retirement Savings Plan Final rules

private-sector workers, requires a minimum contribution of 2% of compensation—which is composed of a 0.8% minimum employee contribution and 1.2% minimum employer contribution³⁶. Between April 2018 and March 2019, the minimum contribution will rise to 5% total.

In addition to regular payroll contributions, participants should be allowed to make non-payroll contributions to their accounts, as it will allow participants to bolster their savings. The Program should evaluate tools to facilitate non-payroll contributions that could be provided by the TPAs.

STAKEHOLDER AND PUBLIC INPUT

The large majority of stakeholder working group participants recommended a default contribution rate of 5%. However, two members—UnidosUS and California Rural Legal Assistance Foundation—prefer 3%.

One stakeholder working group member, EARN, an asset-building organization, surveyed its members on the default contribution rate and found a plurality of respondents (48%) prefer a 5% or higher default rate, with a smaller share of respondents (22%) favoring a 3% default rate and just 8% of respondents favoring a 1% default contribution rate.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation of a 5% default contribution rate. We believe that the higher default rate is beneficial to long-term savings while the employee maintains the ability to lower the rate based on individual economic needs. We suggest that the Board ask prospective TPAs if they feel the need for a minimum contribution, as part of the Program Administration RFP.

STAFF RECOMMENDATION

Adopt a 5% default contribution rate.

Allow participants to make non-payroll contributions to their account.

Analyze the potential need for requiring minimum contribution amounts to ensure cost efficiency and financial feasibility.

³⁶ <u>UK Nest "Cost and Contributions" web page</u>

The Board may elect to include an auto-escalation feature in the program, escalating participant contributions by no more than 1% of salary per year, up to a maximum contribution of 8% of salary due to auto-escalation. The automatic escalation feature may be implemented as an opt-in or opt-out feature.

BACKGROUND

Relevant Code: Government Code §100032 provides the Board authority to implement an autoescalation feature to the program and defines the parameters of how automatic escalation could be constructed:

- Employee contributions subject to automatic escalation shall not exceed 8% of salary.
- Automatic escalation shall result in no more than a 1% of compensation increase in employee contributions per calendar year.
- A participating employee may elect to opt out of automatic escalation and may set his or her contribution percentage rate at a level determined by the participating employee.

Oregon & Illinois Reference Point: The OregonSaves program includes a default autoescalation feature. The default contribution rate is 5%, with the contribution escalating 1% annually until a maximum of 10% is reached.

The Illinois Secure Choice program has no explicit statutory authority to include an automatic escalation feature. Illinois included language regarding implementation of an automatic escalation feature among the scope of services that could be performed by its administrator for future enhancement of the program³⁷.

Feasibility Study: The feasibility study found that focus group participants were comfortable with automatic enrollment into an auto-escalation feature with annual increases to the contributions equal to 1% of salary up to a maximum of $10\%^{38}$. The study included a recommendation that the Board adopt a default auto-escalation feature at 1%.

Relevant External Research: Results from the Retirement Confidence Survey³⁹ published by the Employee Benefit Research Institute suggest that inclusion of an automatic escalation feature will result in a significant increase retirement account balances, especially for low-income workers, compared to a plan with auto enrollment but no auto-escalation. Under the scenarios in the study, the automatic escalation feature increased the overall balances of workers in the lowest-income quartile between 11–28%, and between 5–12% for those with the highest incomes.

³⁷ *Supra* note 3

³⁸ Supra note 2

³⁹ Ruth Helman, Matthew Greenwald, et. al., "<u>The Retirement System in Transition: The 2007 Retirement</u> <u>Confidence Survey</u>," Employee Benefit Research Institute, (April 2007)

As noted in *Automatic: Changing the Way America Saves*⁴⁰, the first generation of retirement plans didn't include automatic enrollment or escalation features, and left many participants shy of their retirement income goals, if they participated at all. Further reforms to retirement plans, by adding these automatic features, can greatly improve employee of having a meaningful balance in retirement.

In a survey of workers at small to midsized businesses, The Pew Charitable Trusts found broad support (68%) for automatic escalation of contributions. This result differed by age cohort and experience with retirement planning. One-fifth of those age 18-35 answered "don't know" when asked about automatic escalation. That drops to 7% among those age 36-51. Those with no retirement planning experience were also twice as likely as those with experience to say they don't know (14% compared with 6%). They also expressed less support for automatic escalation (67% compared with 77%). Those with planning experience may more easily recognize the benefits of savings features or may be more familiar with them. That experience also may be related to having access to an employer-sponsored plan previously. Greater familiarity with these features may make them more comfortable.⁴¹

STAFF ANALYSIS

Individuals are more likely to adhere to the default contribution rate settings than to select their own rate⁴², so it is important the Board consider the proper balance between ensuring participants will accrue meaningful retirement savings through the Program and the impact that escalating contribution levels can have on current take home pay. Automatic enrollment and escalation features have become more prevalent in retirement programs over the last decade. By structuring Secure Choice with contributions as a percentage of salary, and increasing those contributions over time, the program can ensure that as participants move through their careers, their contributions remain commensurate with their salary.

The Program should contain a gradual auto-escalation feature to ensure that employee contributions do not remain stagnant throughout participants' careers and improve retirement security outcomes.

Benefits of implementing an auto-escalation feature include:

- A greater likelihood of participants accruing meaningful retirement savings.
- Ensuring participant contributions do not remain stagnant throughout their career.
- Reduced administrative costs and increased financial stability of the program.

Potential Challenges of including an auto-escalation feature include:

- Increased impact to take home pay.
- Diminished participation (estimated to be small or statistically insignificant).

Participants should have the ability to select an alternative auto-escalation rate that suits their financial needs and abilities. The Program should allow for a range of alternative auto-escalation

⁴⁰ William Gale, J. Mark Iwry, et. al., "Automatic: Changing the Way America Saves," 2009

⁴¹ Supra note 14

⁴² John Beshears, James Choi, et. al., "<u>Defined Contribution Savings Plans in the Public Sector: Lessons from</u> <u>Behavioral Economics</u>," National Bureau of Economic Research, September 2010

rates that ensure participants can accrue meaningful retirement savings, encourage participation in auto-escalation, and mitigate risks of potential financial shocks for participants.

STAKEHOLDER AND PUBLIC INPUT

There was general consensus that the Program should include an auto-escalation feature, though stakeholders were split on whether that feature should be opt-in or opt-out, with the majority preferring an opt-out basis. The stakeholder groups recommended that the increase occur on January 1 for everyone as opposed to the anniversary of the individual's participation in the program, and that participants should get early and frequent communication regarding the upcoming contribution increase.

There was not a clear consensus in the group regarding the amount of the increases, with only a slight overall preference for a 1% annual automatic increase and some groups favoring a 0.5% annual automatic increase or an opt-in escalation feature. To that point, in August of 2017, EARN, an asset building organization based in California, provided survey responses from 313 of their members. In response to the question "To help you save more, should the program automatically raise the percentage set aside from your paycheck by 1% per year, up to a maximum of 8%?" 56% of the respondents answered "Yes", with an additional 19% responding "I'm not sure". Only 25% of the respondents indicated that they would not like the auto-escalation feature.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation of an auto-escalation rate set at 1% per year until the maximum contribution rate is met. We believe that auto-escalation can be beneficial to long-term savings. We further believe that it's important to allow employees to modify or stop the auto-escalation at any point in response to their individual economic needs.

STAFF RECOMMENDATION

Implement automatic escalation of the employee contribution rate, allowing the individual participant to opt-out at any time. If a participant elects a different contribution percentage other than the default, the employee shall be required to indicate whether or not they would like the auto-escalation feature.

The auto-escalation rate should be set at one percentage point per year until the contribution rate is equal to 8%.

Allow participants the option to select an alternative automatic escalation rate.

At a later date, consider a legislative change to allow the cap on auto-escalation driven default contribution rate to be increased to 10%.

The Board must decide default communication methods for participating employers and employees, means of transmitting forms and disclosure documents to participating employers and employees, and the resources allocated to customer service.

BACKGROUND

Relevant Code:

Government Code §100012(c) grants the Board the power and authority to disseminate educational information designed to educate participants about the benefits of planning and saving for retirement and savings strategies that may be appropriate for them.

Government Code §100014 requires the Board to design and disseminate an employee information and disclosure packet that includes a method for eligible employees to opt-out of the Program. The packet shall be made available to employers through EDD.

Government Code §100046(c) compels the Board to determine necessary costs associated with outreach and customer service, among other things.

Government Code §100046(e) compels the Board to conduct comprehensive employee education and outreach about the program and mentions the Board may collaborate with state and local government agencies, community-based and nonprofit organizations, foundations, vendors, and other entities deemed appropriate to develop and secure ongoing resources for education and outreach that reflect the cultures and languages of the state's diverse workforce population.

Government Code §100046(f) compels the board to conduct comprehensive employer education and outreach for the Program, with an emphasis on employers with less than 100 employees. The code also requires the outreach to be developed in consultation with employer representatives, with the integration of the following components:

- A program Internet Web site to assist the employers of participating employees.
- A toll-free help line for employers with live and automated assistance.
- Online Internet Web training.
- Live presentations to business associations.
- Targeted outreach to small businesses with 10 or less employees.

Feasibility Study: The feasibility study found 66% of the eligible employees are people of color with Latinos making up 46% of the eligible population⁴³. While authors of the study were unable to determine a usable data source regarding written English proficiency of the eligible population, they cited one indicator, from the Census Bureau's American Community Survey, which states that about 12% of California private sector employees age 18-64 have "limited

⁴³ *Supra* note 2

English proficiency"⁴⁴. Using Census data, Overture estimates 24% of Spanish-speaking private-sector employees age 18-64 have limited English proficiency⁴⁵.

Relevant External Research:

<u>Language Access</u>: Given the size of the Secure Choice population, it is instructive to look at Covered California's accessibility policies.

Covered California offers some limited information in twelve languages on their website. The entire website is "mirrored," in Spanish, with all web pages and documents available in Spanish. Some limited essential information is also available in Arabic, Armenian, Chinese (Traditional), Farsi, Hindi, Hmong, Japanese, Khmer, Korean, Punjabi, Russian, Tagalog, Thai, and Vietnamese⁴⁶.

<u>For People with Disabilities:</u> Covered California provides free aids and services to people with disabilities, including qualified sign language interpreters and written information in other formats (large print, audio, accessible electronic formats and other formats).

STAFF ANALYSIS

The Program will need to develop effective communications for two major audiences, each with their unique needs: employees and employers participating in the Program.

In general, employees will rely on program communications to learn essential details about the Program, make decisions about their participation in the Program, determine the amount they will contribute, make investment decisions, monitor investment performance, and address concerns or uncertainties about the Program.

Given the limited role of employers in providing information about the Program, effective communications and customer service will be particularly important to the success of the Program.

Online and Mobile Applications: Common industry practices for retirement plans include communication through a wide variety of media and emphasizing use of online and mobile applications. Staff believe use of a wide breadth of communications methods is essential for the program's success. The retirement savings and recordkeeping industry has already shifted to online and mobile applications for a majority of the customer interface. The Board should emphasize effective communication in any procurement for the TPA.

Benefits of a robust online and mobile platform include meeting customer preferences, better control of information delivery, and cost savings associated with a reduced need for direct mail distribution and printing costs.

⁴⁴ Jessica Semega and Edward Welniak, Jr., "<u>The Effects of the Changes to the Current Population Survey Annual Social and Economic Supplement on Estimates of Income</u>," Proceedings of the 2015 Allied Social Science Association (ASSA) Research Conference, 2015

⁴⁵ Supra note 2

⁴⁶ <u>http://www.coveredca.com/accessibility/</u>

The Program should provide essential communication material electronically as a default, but allow participants other options, including direct mail, if requested.

Customer Service: State law requires the Board to establish a toll-free phone line for employers with live and automated assistance. State law does not explicitly require such a phone line for employees. While a majority of participants may be more likely to prefer obtaining information about the Program online, many may still prefer using a phone line for their first point of contact or in the event they are unable to address their needs through other means.

Potential challenges of robust customer service, including live telephonic assistance, include a significant cost impact on the Program and, ultimately, administrative fees upon the participants necessary to finance the Program. Staff expect customer services will require significant up-front costs for the TPA, as it will have to hire and train customer service representatives.

Effective and efficient customer service will be among the significant determinants of employee and employer participation in the Program. Benefits of robust customer services, including live telephonic assistance, include improved participant experience and mitigation of risks related to enrollment of participants, adverse selection by participants, and misperceptions about the program, among other things.

Multiple Languages and Culturally-Appropriate Language: The eligible population for the Program includes nearly seven million working Californians⁴⁷. Two-thirds of the population are people of color and nearly half (46%) are Latino⁴⁸. Three out of five participants will be under the age of 40⁴⁹. It will be important for the Program to ensure vital information about the Program is available in a wide variety of languages and that all material about the Program be written in a culturally-appropriate manner.

Because each additional language will impose additional costs on the Program, it may be important for the Board to prioritize which information is available in myriad languages. The first instance of communication between the Program and a participant will be in the information and disclosure packet, which will include the opt-out form. Given the importance of that document, the Board may want to prioritize making that document available in the widest array of languages above other communication documents.

STAKEHOLDER AND PUBLIC INPUT

Access to information about Secure Choice accounts should be easy, intuitive and be made available through a variety of different options, including: web platforms, mobile, direct mail, and telephonic with live customer service representatives available. Program information should be available in a wide variety of languages and be culturally competent. Program information should also be accessible to the needs of people with disabilities.

⁴⁷ Supra note 2

⁴⁸ *Ibid*.

⁴⁹ *Ibid*.

PROGRAM CONSULTANT INPUT

AKF agrees with staff's assessment and recommendation of necessary communication methods. We also believe that all communications (electronic or print) should be created in a manner to ensure necessary consumer protections. We further believe that the program administrator should demonstrate that all customer service representatives are trained properly to ensure these same consumer protections are established for telephone and electronic conversations.

STAFF RECOMMENDATION

The Program should utilize electronic communication methods to the maximum extent possible to ensure more effective communications and better control costs. The Program should utilize electronic communication methods as the default, but allow alternative methods such as direct mail if requested.

Procurement for the third-party entity responsible for participant communications and customer service should include explicit requirements for an online platform for both participating employees and employers; mobile applications for participants; direct mail; and a live customer service phone-line for participating employees and employees.

The Program should distribute all account communications electronically, but provide participants the option to receive communications through other means.

Information about the Program should be made available in a wide variety of languages and should always be written in a culturally-appropriate manner. If costs limit the translation of certain communication materials, the Program should ensure the employee disclosure information packet and opt-out form be available in a wide variety of languages spoken in California.

California Secure Choice Retirement Savings Program Staff Recommendations for Program Design and Regulations

CATEGORY	STAFF RECOMMENDATIONS		
Service Delivery Model	Direct service model.		
"Bundled" vs. "Unbundled" Provider Administration	Unbundled approach—separate firms for investment management and administrative services.		
Employer Eligibility	Use existing Unemployment Insurance Code sections as part of the definition of eligible employer. Employers shall be exempt from the Program if they provide a tax-qualified retirement plan to their employees.		
	Employers shall certify their exemption from the Program using a form prescribed by the Program—either through an amendment to existing reporting forms or through development of a new form. Use EDD data for employer outreach on registration deadlines—e.g. employers		
	with at least 100 employees, employers with at least 50 employees, etc. Exempt employers shall remain exempt for a one-year period, after which they will recertify their exemption status. Include employers of IHSS providers among eligible employers if legally and		
	practically feasible.		
Employee Eligibility			
Definition of "Employee"	Use existing Unemployment Insurance Code Sections as part of the definition of eligible employee.		
Employee Eligibility	Employees must earn wages subject to Unemployment Insurance taxes and receive a California W-2 from their employer to be eligible.		
Age Limits	Employees must be at least eighteen years of age to participate.		
Identity Verification	Use a Social Security Number or Individual Tax Identification Number to verify an employee's eligibility. TPA should resolve any identity verification issues directly with the employee.		
Part-time Employee Eligibility	Require no minimum number of hours worked for eligibility.		
IHSS Workers	Include IHSS workers among eligible employees if legally and practically feasible.		
IRA Type	Offer Roth for program launch as default, evaluate offering Traditional as an option for later years.		
Enrollment Periods o	Enrollment Periods and Contribution Change Frequency		
Contribution Change Frequency	No more than once per month.		
Enrollment Frequency	Employees can choose to enroll at any time.		

CATEGORY	STAFF RECOMMENDATIONS
Contribution Change Effective Date	Contribution changes shall be made as quickly as administratively possible and shall not exceed 30 days following a change request.
Open Enrollment	Provide employers the employee information packet annually to allow employees an opportunity to participate or recertify their request to opt out of the Program.
Default Contribution	n Rate and Alternative Contribution Elections
Default Contribution Rate	5%.
Non-Payroll Contributions	Allow non-payroll contributions.
Minimum Contribution	Evaluate the need for minimum contribution amounts and impact on administrative costs associated with minimum contribution amounts.
Employer Contributions	Not permitted.
Automatic Escalatio	n
Automatic Escalation	Implement automatic escalation.
"Opt-in" vs. "Opt- out"	Participants should be automatically enrolled in automatic escalation, but have the opportunity to opt-out at any time.
Escalation Rate	Escalate contributions by one percentage point annually.
Alternative Elections	Participants have the option to elect an alternative automatic escalation rate.
Communications	
Communications Methods	Utilize electronic communications as default communications method and allow participants to request direct mail as an option.
Customer Service Language	Provide for live telephonic customer service for employers and employees. Essential information about the Program should be provided in a wide variety of languages and at a reading level appropriate for the target population.

OREGON RETIREMENT SAVINGS PROGRAM

170-080-0001

Notice Rule for Rulemaking, Model Rules of Procedure

(1) Notice Rule for Rulemaking. Before adopting, amending or repealing any permanent rule, the Board will give notice of the intended action:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(b) By e-mailing a copy of the notice to persons on the Board's mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;(c) By mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule; and

(d) By mailing or furnishing a copy of the notice to the list of interested parties compiled and maintained by the State Treasurer.

(2) Model Rules of Procedure. The Attorney General's Model Rules of Procedure as set forth in OAR 137, Divisions 1 through 4, are adopted as rules of procedure for administrative rulemaking and other administrative law functions as exercised by the Board in respect to the Program.

(3) Collaborative Dispute Resolution Model Rules. The Attorney General's Collaborative Dispute Resolution Model Rules, as set forth in OAR 137 Division 5, to the extent not inconsistent with the Act or the Code, are adopted by the Board as its rules for dispute resolution. Stat. Authority: ORS 183.335, 183.341, 183.502 Stat. Implemented: ORS 183.341, 183.502, 178.220 to 178.245

Hist.:

170-080-0002

Confidentiality and Inadmissibility of Mediation Communication

The policies and procedures of the Oregon State Treasurer set forth in OAR 170 in regard to confidentiality and inadmissibility of mediation communication, to the extent not inconsistent with the Act or the Code, are adopted as the policies and procedures of the Board. Stat. Authority: ORS 36.224, 183.335, 183.341, 183.502 Stat. Implemented: ORS 36.224, 36.228, 36.230, 36.232 Hist.:

170-080-0005

Inspection, Certification or Copying Public Records

The policies and procedures of the Oregon State Treasurer set forth in OAR 170, Division 2 in regard to inspection, certification or copying of public records, to the extent not inconsistent with the Act or ORS Chapter 178, are adopted as the policies and procedures of the Board. Stat. Auth.: 178.050 Stats. Implemented: ORS Chapter 183, ORS 192.410 to 192.505 Hist.:
170-080-0010

Administration

(1) **Policy.** The Board intends that, consistent with ORS Section 178.210(1)(p), the Program be operated, and these rules be construed, in a manner consistent with applicable guidance provided by the U.S. Department of Labor relating to payroll deduction IRA programs that are not pension plans under Title I of the Employee Retirement Income Security Act (ERISA) including, but not limited to, 29 CFR Sections 2509.99-1, 2510.3–2(d).

(2) **Definitions**. All capitalized terms used in these rules shall be as defined in the Act. Where a conflict is found to exist between a definition stated in these rules and the corresponding definition in the Act, the statutory definition shall apply. As used in these rules, unless the context indicates otherwise:

(a) "Act" means ORS 178.200 to 178.245, as amended from time to time.

(b) "Beneficiary" means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of an individual retirement account (IRA).

(c) "Board" means the Oregon Retirement Savings Board established in ORS 178.200(1).

(d) "Certificate of Exemption" means a truthful statement by an authorized representative of an Employer that it offers a Qualified Plan to some or all of its Employees.

(e) "Client Employer" means a client of a Worker Leasing Company that obtains services of Leased Workers as defined in OAR 436-050-0005.

 (\underline{fe}) "Code" means the Internal Revenue Code and any regulations, rulings, announcements, or other guidance issued thereunder, as amended.

(gf) "Compensation" means W-2 wages, as defined in 26 CFR 1.415(c)-2(d)(4).

(hg) "Distribution" means any distribution of funds from an individual retirement account (IRA) established pursuant to the Program.

(<u>ih</u>) "Employee" means any person 18 years of age and older working in an Employment, as defined herein.

(ji) "Employer" means any employing unit which employs one or more individuals in an Employment in each of 18 separate weeks during any calendar year, or in which the employing unit's total payroll during any calendar quarter amounts to \$1,000 or more.

(kj) "Employer of Record" means the business associated with the Business Identification Number (BIN), or if unavailable, the Federal Employer Identification Number (FEIN), listed on an Employee's or Participating Employee's W-2.

(<u>lkj</u>) "Employment" means any employment subject to ORS Chapter 657 provided that, notwithstanding the exemptions from the definition of Employment contained in Chapter 657, for the purposes of the Program, Employment includes:

(A) Agricultural labor, as defined in ORS 657.045; and

(B) Commissioned positions, as defined in ORS 657.085, 657.087(1) and (2), and 657.090.

(<u>mlk</u>) "Enrollment Date" means either:

(A) the Initial Enrollment Date, for Participating Employees hired on or before the Facilitating Employer's required Registration Date; or

(B) a date not more than 60 days following start of employment, for Participating Employees hired after the Facilitating Employer's required Registration Date.

(nml) "Executive Director" means the Executive Director of the Oregon Retirement Savings Program. (on) "Exempt Employer" means an Employer who has filed a valid and current Certificate of Exemption pursuant to procedures established by the Board.

(<u>pom</u>) "Facilitating Employer" means an Employer whose Registration Date has passed and who is not an Exempt Employer.

(**qpn**) "Initial Enrollment Date" means the date not more than 60 days after the Facilitating Employer's required Registration Date, by which a Facilitating Employer must initially enroll its Participating Employees.

(rgo) "Individual Retirement Account" or "IRA" means the individual retirement account established by or for a Participating Employee under the Program.

(<u>srp</u>) "IRS" means the Internal Revenue Service of the United States Treasury Department.

(ts) "Non-Payroll Contributions" means contributions other than Payroll Deduction Contributions, rollover contributions, or transfer contributions.

(<u>u</u>t) "Number of Employees" means the number of employees as submitted on the Employer's most recently filed Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance.

 (\underline{vuq}) "Participating Employee" means any person who has established (or has had established on their behalf) and maintains a Program IRA.

 (\underline{wvr}) "Payroll Date" means the date that an Employee's Compensation is paid to the Employee by the Employer through the payment of cash, issuance of a check, electronic funds transfer or other method.

(xw)"Payroll Deduction Contributions" means contributions made by a Participating Employee pursuant to a payroll deduction.

(<u>yxs</u>) "Program" means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1).

 (\underline{zyt}) "Program Administrator" means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.

(<u>aazu</u>) "Qualified Plan" means a retirement plan tax-qualified under the Code, section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p) or a governmental plan under section 457(b). For purposes of this rule, a payroll deduction IRA program as defined in 29 CFR 2510.3-2(d) is not a Qualified Plan.

(<u>bbaav</u>) "Registration Date" means, for each Employer, the date by which the Employer is required to register with the Program or file a Certificate of Exemption, in accordance with Rule 0015.

 $(\underline{\text{ccbb}}w)$ "Roth IRA" means an individual retirement account as defined in the Code section 408(A).

(<u>ddee</u>x) "Standard Elections" means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in Rule 0030.

(<u>eeddy</u>) "Target Date Fund" means a professionally-managed fund containing a mix of investments that invests based on the employee's age and/or projected retirement date. (ffgg) "Worker Leasing Company" (also known as a Professional Employer

Organization or PEO) means a person who provides workers, by contract and for a fee, to work for a client and is licensed as a Worker Leasing Company by the Oregon Department of Consumer and Business Services.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245 Hist.:

<u>170-080-0011</u>

Executive Director

The Executive Director is responsible for the day-to-day operations of the Program and for carrying out such duties and responsibilities as assigned by the Board. Stat. Auth.: ORS 178.200 to 178.245 Stats. Implemented: ORS 178.200to 178.245 Hist:

170-080-0015

Employer Registration and Enrollment (1) **Registration**

(a) On or before the Registration Date, each Employer shall register with the Program or file a Certificate of Exemption.

(b) The Registration Date for an Employer shall be as follows:

(A) An Employer employing one hundred (100) or more Employees: November 15, 2017

(B) An Employer employing at least fifty (50) but no more than ninety-nine (99) Employees: May 15, 2018

(C) An Employer employing at least twenty (20) but no more than forty-nine (49) Employees: December 15, 2018

(D) An Employer employing at least ten (10) but no more than nineteen (19) Employees: May 15, 2019

(E) An Employer employing at least five (5) but no more than nine (9) Employees: November 15, 2019

(F) Client Employers, as defined in 170-080-0010: November 15, 2019

(G) An Employer employing four (4) or fewer Employees: May 15, 2020 (c) In determining the Number of Employees for purposes of this section, Employers shall use data as submitted on the most recently filed Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance. Employers with no Employees reported on Form OQ: Number of covered workers for Unemployment Insurance will have a Registration Date of May 15, 2020.

(d) To register with the Program, a Facilitating Employer shall use the internet portal established by the Program Administrator to provide the following information:

(A) Employer name and assumed business name, if any;

(B) Employer Identification Numbers (Federal Employer Identification Number and Business Identification Number);

(C) Employer mailing address;

(D) Name, title, telephone number and email address of an individual designated by the Employer as the Program's point of contact;

(E) Number of Employees; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(e) New Employers: the Registration Date for an Employer who first meets the definition of Employer after July 1, 2017, shall be the later of:

(A) the date specified in subsection (2) above, or

(B) 90 days after the Employer first meets the definition of Employer.

(f) The Initial Enrollment Date for each Facilitating Employer shall be a date that is not more than 60 days after the Employer's required Registration Date.

(g) A Facilitating Employer who lacks access to the internet may register with the Program by alternate means established by the Program Administrator, but no earlier than 30 days in advance of the Facilitating Employer's required Registration Date.

(2) Enrollment

(a) On or before the Initial Enrollment Date, and on or before the Enrollment Date for each subsequently hired Employee, a Facilitating Employer shall enroll its Employees using the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator. For each Employee, the Facilitating Employer shall provide the following information:

(A) Full legal name;

(B) Social security number or taxpayer ID number;

(C) Date of birth;

(D) Mailing address;

(E) Employee's designated email address; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(b) In order to allow for Employees to establish an IRA through an automatic enrollment process, the Board shall establish procedures with the Plan Administrator for the execution or adoption of such documents as are necessary or appropriate to establish an IRA for such Employee. If the Employee has not opted out established an IRA after notice and an opportunity to opt out has been sent to the Employee using the contact information on file with the Program, an IRA will be established for such Employee pursuant to directives and procedures established by the Board.

Stat. Auth.: ORS 178.200 to 178.245 Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0020

Employer Exemptions

(1) An authorized representative of an Employer may file a Certificate of Exemption with the Program by certifying, through the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator, that the Employer offers a Qualified Plan to some or all of its Employees.

(2) A Certificate of Exemption is valid for three (3) years from the date the Employer files the Certificate with the Program Administrator, so long as the Employer continues to offer a Qualified Plan to some or all of its Employees. A Certificate of Exemption may be renewed by following a process of recertification to be established by the Board not later than December 31, 2019.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0025

Joint Employment, Co-Employment, and Tri-Party Employment Circumstances Responsibilities in Joint or Co-employment Circumstances

(1) With respect to any Employee or Participating Employee in a joint or co-employment relationship, except as provided in subsection 2, the terms "Employer" and "Facilitating Employer" shall mean the Employer of Record.

(2) With respect to any Employee or Participating Employee provided by a Worker Leasing Company, who is not provided on a temporary basis, as described in OAR 436.050.0420, the term "Employer" and "Facilitating Employer" shall mean the Client Employer.
(3) Notwithstanding the foregoing, with respect to any Employee or Participating Employee of a Worker Leasing Company who is not a Leased Worker as defined in OAR 436.050.0005, the terms "Employer" and "Facilitating Employer" shall mean the Worker Leasing Company.
(4) Nothing in this rule shall prohibit a Worker Leasing Company and a Client Employer from entering into an agreement under which the Worker Leasing Company may assist the Client Employer in the performance of some or all of the Client Employer's responsibilities under these rules.

<u>Stat. Auth.: ORS 178.200 to 178.245</u> <u>Stats. Implemented: ORS 178.200 to 178.245</u> <u>Hist.:</u>

Reserved

170-080-0030

Standard and Alternate Elections for Contributions; Automatic Increases; Ceasing Contributions; Requesting Participation

(1) Standard Elections

(a) An Employee who has not provided notice as specified in this section shall <u>participatebe enrolled</u> using the following Standard Elections:

(A) Contribution to the Program at an initial rate of 5% of Compensation;

(B) Auto-escalation at the rate of an additional 1% of Compensation each year until a maximum of 10% is reached;

(C) Investments:

(i) The first \$1,000 in contributions to be invested in a capital preservation investment as selected by the Board;

(ii) All subsequent contributions to be invested in a Target Date Fund; and (D) The Program account will be a Roth IRA and contributions will occur on a post-tax basis.

(2) Alternate Elections

(a) An Employee who does not wish to <u>enroll-participate</u> using the Standard Elections shall notify the Facilitating Employer, in a form or format established by the Program, and within 30 days of <u>receipt of the informational materials provided by the Facilitating Employer enrollment in the Program</u>, that:

(A) The Employee wishes to participate in the Program:

(i) at an initial contribution rate different from the Standard Elections, which shall be a percentage of available Compensation expressed as any whole number (i.e. three (3) percent but not three and one-half (3.5) percent). The minimum contribution rate is 1% and the maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits; or-

(ii) at an initial contribution rate different from the Standard Elections, expressed as a specific whole dollar amount. The minimum contribution rate is \$1.00 and maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits; or

(iii) at an initial contribution rate consistent with the Standard Elections but without auto-escalation; or

 $(i\underline{v}_{ii})$ at an initial contribution rate different from the Standard Elections and without auto-escalation.

(B) The Employee does not wish to participate and is opting out of the Program. (ba) After enrollment, a <u>A</u> Participating Employee may change contribution elections by notifying the Facilitating Employer of the change request, in a form or format established by the Program. This change shall be effected on the Participating Employee's payroll as soon as administratively practicable, but within 30 days of receipt of a notice of change. Employers may limit the processing of contribution election changes to one change per month per Participating Employee.

(**<u>c</u>b**) An Employee who wishes to select an investment option other than that provided by the Standard Elections shall notify the Program Administrator, in a form or format established by the Program, that the Employee wishes to participate in the Program by investing future contributions directly into another fund or funds offered by the Program, which selection shall be effected as soon as administratively practicable.

(<u>de</u>)<u>After enrollment, a A</u>Participating Employee may change investment elections for any portion of the balance of the Program by notifying the Program Administrator of a requested change in investment elections, either in writing, electronically, or in any other form permitted by the IRS, to be effected as soon as administratively possible.

(3) Ceasing Contributions or Requesting Participation

(a) A Participating Employee may cease contributions to the Program by notifying the Facilitating Employer of intent to cease making contributions and revoking the authorization of the Facilitating Employer to make contributions on their behalf. The Participating Employee will give notice of this revocation, in a form or format established by the Program, to the Facilitating Employer at least 30 days before the effective date.
(b) An Employee of a Facilitating Employer who initially opted out of participation in the Program may become a Participating Employee by completing and delivering, in a form or format established by the Program. The request shall be effective on the Employee's payroll following notification as soon as administratively practicable, not to exceed 30 days.

Stat. Auth.: ORS 178.200 to 178.245 Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0035

Contributions

(1) On each Payroll Date Beginning 30 days following the Enrollment Date, and in accordance with a Participating Employee's election, the Facilitating Employer shall, on each Payroll Date, transfer from the Participating Employee's Compensation for contribution to the Participating Employee's IRA:

(a) 5% of Compensation; or

(b) The Participating Employee's elected contribution rate, if different from the Standard Elections; or

(c) The auto-escalated percentage of Compensation for that Participating Employee. (2) Notwithstanding subsection (1), amounts deducted by the Facilitating Employer pursuant to this Rule shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order, are made by the Facilitating Employer.

(3) Amounts deducted by the Facilitating Employer pursuant to this rule shall be transmitted to the Program Administrator as specified by the Program, as soon as administratively possible, not to exceed seven (7) business days from the date of deduction. Failure to transmit the amount as required constitutes an unlawful deduction under ORS 652.610(4).

(4) Beginning January 1, 2019, the Facilitating Employer shall increase the deduction specified in subsection (1) of this Rule for each Participating Employee who has not opted out of autoescalation:-

(a) For a Participating Employee who elected a percentage of available Compensation,

<u>the Facilitating Employer shall increase the amount</u> by an additional 1% of Compensation per year until the total deduction has reached 10% of Compensation for each <u>Participating Employee who had not opted out of auto-escalation</u>.

(b) For a Participating Employee who elected an initial contribution rate expressed as a specific dollar amount, the Facilitating Employer shall increase the amount using a schedule for rate established by the Board.

(5) Auto-escalation will occur on January 1 each year for Participating Employees who:

(a) Are contributing less than 10% of Compensation; and

(b) Have been enrolled in the Program for a period greater than 180 calendar days. Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245 Hist.:

<u>170-080-0036</u>

Non-Payroll Contributions for Participating Employees

Any Participating Employee may choose to make Non-Payroll Contributions to the Program-in any uniform and nondiscriminatory manner determined by the Board and acceptable to the Plan Administrator. Such contributions must not exceed, in combination with Payroll Deduction Contributions, the annual IRA contribution limit as determined by the Internal Revenue Code and related rules promulgated by the IRS, and must be delivered to the OregonSaves IRA trustee in accordance with procedures determined by the Board and approved by the Plan Administrator. Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist .:

170-080-0040

Distributions and Distribution Requests

(1) A Participating Employee may request a Distribution of funds from an IRA by submitting a completed distribution request to the Program Administrator, in a form or format established by the Program.

(2) An IRA Distribution shall be subject to any applicable state and federal income tax obligations.

Stat. Auth.: ORS 178.215(7) Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0045

Program Administration Fees and Expenses

(1) The Board will charge each IRA a Program administrative fee not to exceed the rate of 1.05% per annum, to defray the costs of operating the Program, including internal and external administration, and operational and investment costs, including for professional investment management services.

(2) The Board will from time to time review, adjust, and notify Participating Employees of changes to Program Administration fees.

Stat. Auth.: ORS 178.225 Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0050

Employer Guidelines

(1) Facilitating Employers shall:

(a) Collect contributions and remit those amounts promptly to the Program Administrator or its designee;

(b) Provide information to the Program Administrator, as described in Rules 0015, 0020, and 0030;

(c) Retain the notice of any Employee elections or election changes pursuant to any action defined in Rule 0030 for a period not less than three (3) years from the date of the notice. Facilitating Employers may choose to comply with this requirement by allowing the Program Administrator to maintain such documentation on their behalf, either electronically, or in any other medium allowable under applicable law;

(d) Record the Participating Employee's elections and election changes in its payroll system in a manner that enables the Facilitating Employer to make accurate deductions from the Participating Employee's paycheck; and

(e) Make clear that the Facilitating Employer's involvement in the Program is limited to collecting contributions and remitting them to the Program Administrator or its designee, and that the Facilitating Employer does not provide any additional benefit or promise any particular investment return on Employee savings.

(2) Facilitating Employers shall not:

(a) Contribute to the Program;

(b) Endorse or disparage the Program; and

(c) Execute any discretionary authority, control, or responsibility with respect to the Program.

(3) Facilitating Employers may, if they choose:

(a) Provide additional general information and other educational materials that explain the advisability of retirement savings, including the advantages of contributing to an IRA; and

(b) Answer Employee inquiries about the mechanics of the IRA payroll deduction. (4) Facilitating Employers should refer other inquiries to the Program Administrator or as otherwise directed by the Board.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245

Hist.:

170-080-0055

Distribution of Materials to Employees

(1) At least 60 days before the Initial Enrollment Date, <u>T</u>the Program Administrator will provide a Facilitating Employer a set of informational materials about the Program <u>upon completion of</u> <u>the Facilitating Employer's registration in the online portal</u>. The Program Administrator will provide the materials to the Facilitating Employer by supplying the internet location where such materials may be downloaded or, upon request of the <u>Facilitating</u> Employer, will provide the materials in hard copy form.

(2) The informational materials will include the following information:

(a) The benefits and risks associated with making contributions to a Program IRA;

(b) Instructions describing how to make contributions to the Program, including the

Standard Elections applicable if the Participating Employee does not make other elections;

(c) A description of the other elections available under the Program, including how to opt out of the Program;

(d) Investment alternatives available under the Program and instructions describing how to make or change an investment election;

(e) The process for requesting a Distribution of retirement savings from the Program;

(f) How to obtain additional information about the Program, including the fees associated with the Program;

(g) That the Facilitating Employer does not endorse or recommend the Program;

(h) That Employees and Participating Employees seeking financial advice should contact financial advisers, that Facilitating Employers are not in a position to provide financial advice, and that Facilitating Employers are not liable for decisions Employees and Participating Employees make regarding the Program;

(i) That the Program is not an employer-sponsored retirement plan;

(j) That Employee participation in the Program is completely voluntary;

(k) That information on IRAs outside of the Program is available from other sources;

(1) That neither the value of a Program IRA, nor the rate of return are guaranteed by the state, the Facilitating Employer, or anyone else; and

(m) That by standard election, contributions under the Program are made to a Roth IRA, and that a Roth IRA may not be appropriate for all individuals.

(3) At least 30 days before the Initial Enrollment Date, the Facilitating Employer will provide each of its Employees with the informational materials provided by the Program Administrator.(4) For subsequently hired Employees, within 30 days of hire, the Facilitating Employer shall provide the informational materials provided by the Program Administrator.

(5) Facilitating Employers shall provide informational materials either directly, or by supplying the Employee with the internet location where the information may be found, along with Board - provided instructions about how to obtain the information if the Employee does not have internet access.

(6) The Facilitating Employer shall document that the informational materials were given to the Employee. Documentation may consist of a notation in the Facilitating Employer's records identifying the Employee and the date the materials were distributed. Facilitating Employers may choose to comply with the requirement to document the delivery of informational materials to Employees if the Program Administrator maintains such documentation on their behalf, either electronically or in any other medium allowable under applicable law. The Facilitating Employer may request that the Employee acknowledge receipt of the informational materials but shall not request or require that the Employee take any additional steps, including returning any forms to the Facilitating Employer.

(7) Notwithstanding anything in this Rule to the contrary, where the Facilitating Employer timely provides the Program Administrator with the contact information (e.g., designated email address(es)) of Participating Employees, the Facilitating Employer may choose to satisfy its obligations to provide the informational materials to Participating Employees by allowing the Program Administrator to do so on its behalf. Delivery by the Program Administrator must be at such time and in such manner as is otherwise specified in this Rule.

Stat. Auth.: ORS 178.200 to 178.245

Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0060

Technical Assistance to Employers

The Program Administrator will provide a range of tools and technical assistance for Employer use. Facilitating Employers shall advise the Program Administrator if they desire technical assistance in completing Program requirements.

Stat. Auth.: ORS 178.200 to 178.245 Stats. Implemented: ORS 178.200 to 178.245 Hist.:

170-080-0065

Confidentiality

(1) **Confidentiality**. The Board will treat Individual IRA account information as confidential, including without limitation, names, addresses, telephone numbers, personal identification information, contributions, and earnings.

(2) Written release.

(a) The Board may disclose Individual IRA account information to persons or entities other than those described in subsection (4) of this Rule if it receives a signed release from the Participating Employee consenting to disclosure of some or all of the Individual IRA account information to a specific person or entity. For purposes of this paragraph Individual IRA account information includes information pertaining to:

(A) the Participating Employee's IRA account;

(B) Beneficiary designations;

(C) Distributions; or

(D) other information contained in any draft court order.

(b) A written authorization to release information is valid indefinitely, unless a specific end date is provided in the written statement.

(3) **Subpoena**. A subpoena for information available from the Program must be made out to the State of Oregon, Oregon Retirement Savings Program. The Program reserves the right to object to any subpoena on the grounds that the subpoena fails to provide a reasonable time for preparation and travel, is otherwise unreasonable or oppressive, or that service was improper, in addition to any other basis legally available. To facilitate prompt processing, copies of subpoenas should be served at the Office of the State Treasurer. Faxed subpoenas are not acceptable.

(4) **Disclosure.** The Board may disclose <u>aggregated anonymized</u> data which does not include information that is identifiable to an individual Participating Employee or Employer for purposes of research associated with the Program. The Board may disclose information that it is required to disclose under the Oregon Public Records Law. The Board may disclose Individual IRA account information to the Plan Administrator, the providers of investments for the Program, regulatory agencies to the extent disclosure is required by law, and to other persons or entities to the extent the Board determines disclosure is necessary to administer the Program. Stat. Auth.: ORS 178.220 Stats. Implemented: ORS 178.200 to 178.245

Hist.:

Appendix A

Secure Choice Fact Sheet

Name of Program	Illinois Secure Choice Savings Program.
Type of Program	State Administered Payroll Deduction IRA.
Date Contributions Begin	Secure Choice is expected to begin in early 2018 with a pilot program, followed by a phased-enrollment process to be determined by the Treasurer and Board in consultation with the Contractor. Full implementation must be complete by the end of 2020.
ELIGIBILITY	
Eligible Employer (Defined by Act)	 "Employer" means: A person or entity engaged in a business, industry, profession, trade or other enterprise in Illinois, whether for profit or not for profit that: (i) has at no time during the previous calendar year employed fewer than 25 employees in the State; (ii) has been in business at least 2 years; and
	 (iii) has not offered a qualified retirement plan, including, but not limited to, a plan qualified under Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p), or Section 457(b) of the Internal Revenue Code of 1986 in the preceding 2 years.
Qualified Retirement Plan	In addition to the Internal Revenue Service ("IRS") defined qualified retirement plans, Simple IRAs and Simplified Employee Pension ("SEP") IRA plans will be considered qualified plans and offering a qualified plan will exempt an employer from participation in Secure Choice.
Eligible Employer (Estimates)	Approximately 14,000 Illinois employers have 25 or more employees, have been in business for two (2) years, and do not offer a qualified retirement plan.
Eligible Employees (Defined by Act)	 "Employee" means a person working in Illinois who: is age 18 or over; is employed in Illinois by an Employer; and has wages allocable to Illinois.
Number of Potential Participants (Estimated)	There are an estimated 1,226,000 workers who will be eligible for Secure Choice. Additionally, there are 447,000 self-employed workers without a plan who might be brought into Secure Choice through future self-enrollment. (See Section III.G.2)
Participant Projections (Estimated)	The total number of Secure Choice accounts estimated is as follows: 883,000 (Year 3), 892,000 (Year 5), and 914,000 (Year 10). This does not include any additional accounts that might result from adding voluntary employers/employees or self-

	employed workers.
Program Asset Projections (Estimated)	At 3% default contribution: \$1.23B (Year 3), \$2.75B (Year 5), and \$6.09B (Year 10). At 5% default contribution: \$2.03B (Year 3), \$4.52B (Year 5), and \$10.02B (Year 10).
PROGRAM BASICS	
Account Type	IRA - one IRA account per Participant.
IRA Type	Roth as default (Subject to legislative approval, the Board may elect to offer traditional IRA in the future, see Section III.G.4).
Contributions - Employer	Not permitted.
Contributions - Participants	Participant contributions will be withheld and transmitted by the Employer on behalf of the Participant. Contributions must be remitted by the Employer to the Contractor no later than the last day of the month following the month in which the compensation otherwise would have been payable to the Participant in cash.
EMPLOYEE CONTRIBUTIONS	
Wages (Defined in Act)	Any compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by a Participant from an Employer during the calendar year.
Auto-Enrollment Process	Employer facilitated with technical support from the Contractor. An opt-out period will occur before payroll deductions begin (Board is currently considering a 30-day window). Only Employees can opt themselves out of Secure Choice.
Annual Open Enrollment	There will be an annual open enrollment period once each year for Employees who previously opted-out. The Board will designate an enrollment window. Newly hired Employees will be enrolled at the time of hire.
Default Contribution Rate	3% (currently in statute). Legislation is pending that would allow the Board to select a default rate between 3% and 6%.
Contributions – Minimum Amount / Electable Levels*	Participants can choose any increment of 1% or make contributions at a fixed dollar amount.
Contributions – Maximum Amount	Per IRA limits: in 2016 \$5,500 (under age 50) and \$6,500 (over age 50). All other relevant IRS limits also apply.
Catch-Up Contributions	As permitted under IRS rules.
Contribution Changes*	Participants can elect alternative contribution amounts (increments of 1% or a fixed dollar amount) at the initial enrollment period or, as administratively determined, any time thereafter.
Employee Contribution Cessation (0%	Participants can stop contributing at any time.

Contribution Election)	
Automatic Contribution Escalation	Not currently allowed, although the Board is interested in adding this feature at some point. Legislative action may be necessary.
Contribution Data and Fund Deposit Frequency	Contribution files can be received as frequently as daily.
Contribution File Management*	To be determined jointly by the Board, Treasurer, and the Contractor. Efforts are underway to identify a common standard and best practices model with payroll providers.
Contribution File Processing Issue/Reject Management	Employer "file" via portal w/web submittal and Automated Clearing House ("ACH") or equivalent funding.
Contribution Limit Monitoring and Management (Per Employer)	Employer payroll or portal-controlled with contribution limit monitoring at the program level.
Contribution Limit Monitoring and Management (Across Employers)	Participant's responsibility with dollar contribution limit monitoring at the program level.
Roth IRA income limits	Participant is responsible for complying with IRS income limits for Roth contributions. Information about income limits should be included with introductory Secure Choice materials.
Contribution Limit Management (Return of excess)	Managed by the Contractor.
INVESTMENT OPTIONS	
Requirements	IRA compliant and passively managed.
Default Investment Option	Target date retirement funds based on Employee's age
Contribution Investment – Holding Period*	Contributions to be held in a conservative principal protection investment fund during the initial holding period (90 days following initial account setup). <i>This is proposed in order to</i> <i>facilitate refund of full contribution amounts for participants who</i> <i>may have been unintentionally enrolled. Alternative approaches</i> <i>may also be considered.</i>
Participant Investment Direction	Yes
Investment Option Changes	Daily

*Information contained in Appendix A may be subject to change.