AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

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Testimony of Allison E. Wielobob
on behalf of the
American Retirement Association

Committee on Civil Service and Labor
New York City Council

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Thank you, Chairman Miller and other members of the Civil Service and Labor Committee, for the opportunity to speak with you about Int. No. 0888-2018, the proposed required automatic enrollment arrangement for employees of private New York City employers that do not sponsor a private retirement plan (the "Proposal"). My name is Allison Wielobob, and I serve as General Counsel of the American Retirement Association ("ARA").

Today, I speak on behalf of the ARA and its five underlying affiliate organizations, representing the full spectrum of America's private retirement system: the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the ASPPA College of Pension Actuaries ("ACOPA"), the Plan Sponsor Council of America ("PSCA"). Together, we are a national organization of more than 26,000 members who provide consulting and administrative services to American workers, savers and sponsors of retirement plans. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys focused on working with the sponsors of qualified retirement plans. ARA's diverse membership is united in their dedication to America's private employer-sponsored retirement system.

The ARA strongly supports the goal of helping the citizens of New York City strengthen their retirement security by facilitating well-designed workplace-based retirement plans. We have consistently and actively supported proposals to expand retirement plan coverage in the private workforce. It is our long-held belief that automatic enrollment is an important and effective tool for increasing savings rates and employee participation. Moreover, we have also supported proposals and programs run by states and localities designed to promote and facilitate retirement saving by those who are not covered by an employer plan. With this in mind, our concerns regarding the proposal fall into two general categories.

- **The Proposal should automatically exempt employers that sponsor an ERISA-covered retirement than base applicability on the meaning of "eligible employee." Additionally, the program should not require covered employers to**

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use the City's retirement savings options. Employers should be allowed to select a payroll deduction IRA or qualified plan from the marketplace.

The Proposal would place undue complexity and burdens on employers by imposing a set of rules that parallel the extensive and effective set of federal rules that apply to workplace retirement plans. The Employee Retirement Security Act of 1974 ("ERISA") enables employers to structure retirement plans that meet the needs of their workforce and provides comprehensive governance at the federal level. ERISA includes a fiduciary standard that is recognized as "the highest known to the law." For 45 years, ERISA has ensured that fiduciaries are acting in the best interest of the fund, and employees receive their benefits.

In enacting ERISA, Congress recognized the potential for differing state standards and provided for preemption conflicting state and local laws. That is, Congress intended for ERISA to serve as a source of uniform administration of employee benefit plans nationwide. And the U.S. Supreme Court has recognized that ERISA preempts state and local laws that: (1) mandate employee benefit structures or their administration; (2) provide alternative enforcement mechanisms; or (3) bind employers or plan fiduciaries to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself. The Court has said that Congressional intent to occupy the field supersedes the operation of state law on the same subject matter without regard to whether actual conflict exists.

We are concerned that the Proposal overlaps with ERISA's comprehensive governance of private-sector retirement plans. Similar proposals in several states – including Oregon, California, Illinois, Maryland, and New Jersey exempt employers that offer an ERISA covered plan to their employees. **The ARA recommends** that the Proposal be amended to automatically exempt employers that provide an ERISA-covered retirement plan rather than base applicability on the meaning of "eligible employee." It is critical that additional burden not be placed on employers that already offer a qualified retirement plan regulated by federal law.

The ARA recognizes that far too many Americans lack access to a retirement plan at work. But this is not due to a lack of options in the marketplace. Today, employers may choose from among many retirement plans available at a reasonable cost, including straightforward payroll deduction IRA programs. The problem is that many business owners are understandably focused on running their businesses to focus on offering a retirement plan to their employees. The ARA believes that any requirements placed on employers should be designed to minimize the burden on the employer while promoting the desired policy outcome of increasing the availability of workplace savings arrangements.

Additionally, **ARA recommends** that employers which do not presently sponsor a retirement plan should not be required to use the City's retirement savings program. Rather, we suggest

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that the Proposal permit employers to choose a payroll deduction IRA or qualified plan from the marketplace.

ARA's second area of concern is the Proposal's eligibility conditions, that is, the requirement that employees age 18 years and older be covered by the plan.

- **The Proposal should not apply to employers that sponsor plans with eligibility conditions that comply with ERISA.**

Under the proposal, employees who are 18 years of age or older and employed full or part-time would be "eligible employees." ERISA, on the other hand, precludes an employer from restricting eligibility for the retirement plan beyond one year of service (1,000 hours in a year) and attainment of age 21. In other words, under ERISA, employers may wait until age 21 to allow an employee to enroll in the employer retirement plan and limit participation in the plan to employees who work for the employer for more than 1,000 hours in a year. Defining eligible employee with an age requirement of 18 years old is in direct contradiction of ERISA's eligibility rules.

The Proposal would cause confusion about whether employers that sponsor a tax-qualified retirement plan are subject to the Proposal's requirements when their ERISA plan limits participation until attainment of age 21. To ensure that the Proposal does not violate federal law, employers that sponsor plans with eligibility conditions that comply with ERISA should be exempt from the requirement to facilitate the city's plan. That is, they should not be subject to any additional – and different -- state and local rules.

Thank you for allowing me to speak on this issue and I am happy to answer any questions that you may have.