

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 52

Introduced by Council Members Miller, Kallos, Rosenthal, Chin, Louis, Lander, Reynoso, Vallone, Dromm, Adams, Maisel, Ayala, Cornegy, Moya, Koo, Barron, Cabrera, Salamanca, Gibson, Gjonaj and Rivera.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing a retirement savings board to oversee the city's retirement savings program for certain self-employed individuals and employees of private entities, and setting forth powers of the comptroller and other provisions in relation to such program

Be it enacted by the Council as follows:

Section 1. Chapter 14 of title 20 of the administrative code of the city of New York, as added by a local law for the year 2021 amending the administrative code of the city of New York, relating to establishing a retirement savings program for certain self-employed individuals and employees of private entities, is amended by adding new sections 20-1402, 20-1405, 20-1406, 20-1408, 20-1410, and 20-1412 to read as follows:

§ 20-1402 Establishment of the retirement savings board; membership.

§ 20-1405 Powers of retirement savings board.

§ 20-1406 Powers of the comptroller

§ 20-1408 Rulemaking.

§ 20-1410 No guarantees permitted; potential losses.

§ 20-1412 Annual report and audit.

§ 20-1402 Establishment of the retirement savings board; membership. *a. There shall be a retirement savings board, which shall consist of three members. The members of the board shall be appointed by the mayor.*

b. In making such appointments, the mayor may consider factors, including, but not limited to, the following:

- 1. Experience in the field of retirement plan administration;*
- 2. Actuarial or demographics experience;*
- 3. Representation of covered employees, other eligible individuals, or participants; and*
- 4. Representation of covered employers, other eligible employers, or participating employers.*

c. The mayor shall designate one member of the board to act as the chair.

d. Board members shall serve at the pleasure of the mayor and shall not receive compensation for work on such board.

e. The board shall meet not less than once every quarter and whenever deemed necessary by at least two members of the board.

f. The mayor may designate one or more agencies to provide staffing and other administrative support to the board.

g. Within appropriations therefor, the board may appoint one or more employees, including an executive director who may assign and supervise board staff. The board may delegate powers and functions to such employees, or to staff of agencies designated by the mayor pursuant to subdivision f of this section.

§ 20-1405 Powers of the retirement savings board. *Subject to applicable federal and state law, including its duties as a fiduciary, the board may:*

a. After consultation with the comptroller, determine the date upon which the program established pursuant to this chapter shall become operational and begin accepting contributions from participants, provided that such date shall be no later than two calendar years after the effective date of this chapter, unless the board determines that a further delay is reasonably necessary to ensure the effective operation of the program. The board shall provide notice of such determination to delay the program to the mayor, comptroller, and speaker no later than 90 days prior to two calendar years after the effective date of this chapter and shall indicate what conditions contribute to such determination and an approximation of the additional time required to ensure effective operation of the program, provided, however, that such time shall not be longer than six calendar months or an additional notice shall be required prior to the end of such time indicating the present circumstances and providing an updated date for the program to become operational.

b. Delay implementation of the obligation imposed by subdivision a of section 20-1409 upon a covered employer, provided that:

1. such delay shall not exceed two years from the initial enrollment of covered employees;

2. such delay shall be based upon the practicability of implementation using the following criteria:

i. the number of covered employees;

ii. the size of the covered employer; or

iii. the sector or industry of the covered employer; and

3. the board shall provide to the mayor and speaker and post on its website, the identity of any covered employer for whom implementation is delayed and the length of the delay granted.

c. Enter into contracts, agreements, or arrangements with one or more administrators allowing such administrators to perform any functions of the board. Under any such contract, agreement, or arrangement, the board: (i) shall require an administrator to exercise the duties of a fiduciary in the administration of the program established by this chapter, (ii) shall require an administrator to comply with any standards concerning the receipt and safekeeping of such funds as may be issued by the comptroller pursuant to section 20-1406, (iii) shall require an administrator to incorporate and offer the investments selected by the comptroller pursuant to section 20-1406, and (iv) may require an administrator to assume legal responsibility and liability pursuant to this chapter for functions to be performed by an administrator.

d. Enter into any contracts, agreements, or arrangements with any person deemed qualified by the board and create any written instruments necessary, including, but not limited to, trust agreements, to create IRAs for participants in compliance with the internal revenue code. Under any such contracts, agreements, arrangements, or written instruments, the assets of IRAs established for participants: shall be combined for the purpose of making investments directed by the comptroller pursuant to section 20-1406; shall be managed and administered for the exclusive purposes of providing benefits to participants and defraying reasonable expenses of administering, maintaining, and managing such investments of the program, including, but not limited to, the expenses of the board and the comptroller; shall at all times be preserved, invested, and expended solely for the purposes of the program and no property rights therein shall exist in favor of the city or any participating employer; shall be received and held in compliance with standards concerning the receipt and safekeeping of such assets as may be issued by the comptroller pursuant to section 20-1406; shall not be transferred or used by the city for any

purposes other than the purposes of the program or funding the expenses of operating the program; shall not constitute property of the city; and shall not be commingled with city funds, and the city shall have no claim to or against, or interest in, the trust assets. The board and any such person shall be fiduciaries with respect to the IRAs established and maintained under the program to the extent required by applicable law or any such contract, agreement, arrangement, or written instrument.

e. Enter into any other contracts, agreements, or arrangements for, and retain or employ, the services of any other person deemed qualified by the board to carry out the purposes of this chapter, subject to the authority of the comptroller pursuant to section 20-1406.

f. Allow participants to allocate assets of their IRAs among investment options and designate an investment option as a default investment for the IRAs of covered employees who do not make an investment choice.

g. Establish a default type of IRA, Roth or traditional, for covered employees and identify the types of IRA that any other eligible individual who enrolls in the program will be permitted to select.

h. Maintain fees and costs to participants at a level determined by the board to be reasonable, consistent with the purpose of this chapter.

i. Educate and provide outreach to covered employers, other eligible employers, covered employees, and other eligible individuals.

j. Seek loans, grants, or other contributions to offset or finance fees or costs for the administration of the retirement savings program on an ongoing basis from financial firms, institutions, or government entities.

k. Implement escalation or reduction of participants' default contribution rates, where applicable, from time to time, provided that the board shall notify participants at least 45 days in advance of such escalation or reduction. If such escalation or reduction is adopted, the board shall permit affected participants to opt out of such escalation or reduction.

l. Establish a process by which a covered employee or other eligible individual may voluntarily enroll in and contribute to the program.

m. Establish a process by which an employer that is not a covered employer may voluntarily offer the program to its employees and allow those employees to enroll in and contribute to the program.

n. Establish a process by which a covered employer may seek a hardship exemption from this chapter, which may be obtained by demonstrating to the board's satisfaction that participation would be unduly burdensome for the employer.

o. Establish a process by which participating employers who cease to be covered employers, for example, by offering the New York State Secure Choice Program to their employees, may discontinue their participation in the program.

p. To the extent consistent with law and the authority of the comptroller under section 20-1406, establish and maintain the program by: contracting, partnering, or forming a consortium with one or more states, local governments, or organizations of governmental entities, in which certain aspects of each such entity's program are combined for administrative convenience and efficiency, provided that in any such case, the auto-IRA program used, the joint program or the consortium otherwise satisfies the requirements of this chapter.

q. Establish procedures and requirements, which may apply to participating employers and any other employer as defined in subdivision 3 of section 190 of the labor law, to enable the board, or the enforcement agency designated pursuant to section 20-1414, to ascertain whether such an employer is subject to the provisions of this chapter.

r. Approve an investment strategy and policy, which shall define one or more investment options that participants may choose to invest in, and any modifications to such strategy and policy pursuant to subdivision a of section 20-1406.

s. Take all other actions consistent with this chapter that are necessary and appropriate to carry out its purposes.

§ 20-1406 Powers of the comptroller. *Subject to applicable federal and state law, including the comptroller's duties as a fiduciary to the extent required by applicable law, the comptroller shall:*

a. Establish an investment strategy and policy, provided that such strategy and policy shall be subject to the approval of the board. The underlying investments or investment funds selected or authorized pursuant to this section to implement such strategy, policy, and investment options shall be diversified by the comptroller consistent with such strategy and policy so as to minimize the risk of large losses under the circumstances. The comptroller may, at any time, modify such strategy, policy, and investment options, subject to the approval of the board.

b. Direct the underlying investments or investment funds implementing the investment policy and strategy and investment options established pursuant to subdivision a of this section. Such underlying investments may include, without limitation, shares of mutual funds and exchange-traded funds, publicly-traded equity and fixed-income securities, and other investments

available for investment by the program. When selecting and authorizing such investments, the comptroller shall consult with the board and any person retained by the board pursuant to section 20-1405 and shall, not less than once every quarter and prior to any meeting of the board that may be scheduled during such quarter pursuant to subdivision e of section 20-1402, issue a report to the board describing its activities undertaken pursuant to this section and the performance of the investments or investment funds selected or authorized pursuant to this section. The comptroller shall respond within a reasonable time to any questions raised by the board about such report.

c. Enter into any contracts, agreements, or arrangements, as the comptroller may deem appropriate, with any person deemed qualified by the comptroller to assist in the selection and authorization of investments or to provide such investments or investment management services. Under any such contract, agreement or arrangement, the comptroller shall require such person to exercise the duties of a fiduciary with respect to the selection and authorization of such investments and may require such person to assume legal responsibility and liability pursuant to this chapter for functions to be performed by such person.

d. Issue standards, as the comptroller may deem appropriate, concerning the receipt and safekeeping of any funds of participants held by the board or any person retained by the board pursuant to section 20-1405.

e. Establish, consistent with applicable law, a plan to promote the retention of the services of minority- and women-owned business enterprises for the program.

f. Conduct the annual financial audit of the retirement savings program required by subdivision a of section 20-1412 or enter into any contracts, agreements, or arrangements with any person deemed qualified by the comptroller to conduct such audit, provided that the

comptroller shall take such action as may be necessary to ensure that any audit concerning subdivisions a, b, c, d, or e of this section shall be undertaken by a person independent of the comptroller.

§ 20-1408 Rulemaking. *The board and the comptroller may each promulgate rules to implement the provisions of this chapter concerning their respective powers.*

a. Such rules may establish variations from the requirements otherwise established by this chapter in order to ensure that this program does not conflict with, and is not otherwise preempted by, state or federal law, including the employee retirement income security act of 1974, and to ensure that this program does not constitute an employee benefit plan under such act, provided that such variations are not inconsistent with the overall purpose and policy of this chapter.

b. Such rules may include any provisions necessary to ensure exemption from the employee retirement income security act of 1974.

§ 20-1410 No guarantees permitted; potential losses. *Except as otherwise required by federal or state law, no person including, but not limited to, a participating employer, any person retained by the board pursuant to section 20-1405, a member of the retirement savings board, the board itself, the comptroller, any person retained by the comptroller pursuant to section 20-1406, the city, or any representative of any of the preceding shall guarantee a rate of return or interest for any contribution made to the retirement savings program. In addition, neither participating employers, the board, its members, the comptroller, nor the city or any representative of the board, its members or the city shall be liable for any loss incurred by a participant, or any other individual or corporation, as a result of participating in the retirement savings program; further,*

any liability of an administrator for any such loss shall be confined to the liability defined by this chapter or by the agreement between the board and an administrator.

§ 20-1412 Annual report and audit. *a. The retirement savings program shall undergo an annual financial audit by or at the direction of the comptroller.*

b. No later than three months after the end of a calendar year and annually thereafter, the board, in consultation with the comptroller, shall make available on the city's website an annual report that shall describe and summarize the activities of the board and the comptroller. That report shall include but not be limited to:

- 1. the total number of participants;*
- 2. the total number of covered employees and other eligible individuals in the city;*
- 3. the total number of participants enrolled during the previous year;*
- 4. the demographics and income levels of participants, to the extent reasonably ascertainable;*
- 5. the number of covered employees who opted out of the retirement savings program during the subject year;*
- 6. the number and type of civil penalties imposed by the enforcement agency pursuant to section 20-1414, for violating the requirements of this chapter;*
- 7. the total assets under management in the retirement savings program;*
- 8. fund profiles, investment objectives, assets under management and performance measures, such as rates of return, for each of the investment options provided by the retirement savings program for the subject year; and*
- 9. the total cost of administering the program during the subject year.*

c. The data required to be included in this annual report will also be made available on the city's website in a non-proprietary format that permits automated processing.

§ 2. This local law takes effect on the same date as a local law for the year 2021 amending the administrative code of the city of New York, relating to a retirement savings program for certain self-employed individuals and employees of private entities, as proposed in introduction number 888-A, takes effect.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 29, 2021 and approved by the Mayor on May 11, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 52 of 2021, Council Int. No. 901-A of 2018 to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.