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VIA Federal eRulemaking Portal

<http://www.regulations.gov>

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW.
Washington, DC 20210

Re: Proposed State Savings Arrangements Safe Harbor Regulations
(RIN 1210-AB71)

Ladies and Gentlemen:

The Department proposes to create a safe harbor whereby a State-mandated arrangement would not constitute an employee benefit plan subject to ERISA. Thus, ERISA would not preempt such arrangements. Prop. Reg. §2510.3-2(h) would create a safe harbor whereby a State may require a private employer to facilitate its employees' participation in individual retirement accounts (IRAs) without constituting an employee benefit plan subject to ERISA. Compliance with the proposed conditions "will assure that the employer's involvement in the state program is limited to the ministerial acts necessary to implement the payroll deduction program as required by state." 80 Fed Reg. 72006, at 72009 (Nov. 18, 2015).

Under Prop. Reg. §2510.3-2(h)(2)(i), a State may require that an employer facilitate the participation of just "those employees who are not already eligible for some other workplace savings arrangement." However, the safe harbor is limited to State mandates for which the "employer contributes no funds to the program and provides no bonus or other monetary incentive to employees to participate in the program." Prop. Reg. §2510.103-2(h)(1)(ix).

The safe harbor does not specifically address the status of a State-mandated arrangement that meets some but not all of the conditions listed in Prop. Reg. §2510.3-1(h)(1). I request that the final regulation provide that, if a State requires a private employer to contribute funds to a State-sponsored vehicle for its employees, the arrangement would constitute an employee benefit plan subject to ERISA. This result would be consistent with Interpretive Bulletin §2509.2015-02.

The inclusion of a clear statement that State-mandated employer contributions would result in an employee benefit plan subject to ERISA is particularly important in that the Department's view of State mandates is applicable to both retirement plans and welfare plans. For example, if it is the Department's view that a State may not require a private employer make contributions to a State-sponsored vehicle for retirement savings for an employee who is not otherwise eligible for a workplace retirement vehicle, then governmental entities and private employers would expect that the Department's

January 11, 2016
Page 2

view would be that a State (or local governmental entity) may not require a private employer make contributions for health benefits for employees who are not eligible for (or participating in) workplace health coverage.

The foregoing comments reflect my personal opinion and are not the opinion of my employer or any other person.

Very Truly Yours,



Linda R. Mendel