



January 19, 2016

U.S. Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
200 Constitution Avenue, NW
Washington, DC 20210
Attn: State Savings Arrangement Safe Harbor

RIN: 1210-AB71—State Savings Arrangement Safe Harbor

To Whom It May Concern:

I am writing about the U.S. Department of Labor's (DOL) guidance on the state savings arrangement safe harbor under the Employee Retirement Income Security Act (ERISA).¹ The National Federation of Independent Business (NFIB) believes the guidance contravenes the intent of ERISA and, in fact, undermines the objective of ERISA preemption by subjecting employers to increased liability for benefit plans that run afoul of conflicting state laws' private retirement benefit programs. NFIB requests that DOL withdraw the guidance or, in the alternative, limit application to state programs where employer participation is voluntary.

NFIB is the nation's leading small business advocacy association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 325,000 independent business owners who are located throughout the United States.

According to the U.S. Small Business Administration's Office of Advocacy, small businesses represent about half of America's private sector workforce. For this reason it is critical that DOL understand small firms' unique business structure and the exceptional problems that this guidance would place on these smaller but critically-important employers in our country, many of which operate in multiple states. In short, labor law is difficult to understand and ever-changing.

The guidance stems from states' attempts to expand retirement coverage by passing state retirement programs for private sector employers. The legislation ranges from mandatory programs to open voluntary exchanges. Concerns have been raised that these state programs might be preempted by ERISA. In an effort to 'save' these programs from federal preemption, DOL's guidance creates a safe harbor for state retirement programs.

Unfortunately, by undermining ERISA's intent to ensure stability with benefit plans by regulating aspects of employer-provided benefits at the federal level, DOL's guidance will create confusion and make benefit offerings more complicated for small employers with employees in multiple states. Placing a mandatory state-imposed retirement regime on top of ERISA will cause unnecessary burdens, particularly

¹ 80 Fed. Reg. 72006 (November 18, 2015).

for small businesses, and it could have the effect of inadvertently subjecting employers to legal liabilities under ERISA. Creating different retirement plans in different states will create significant compliance challenges for employers—particularly where states are implementing mandatory requirements for employers. This result clearly runs counter to the statutory intent of ERISA and its preemption clause.

Rather than condoning this additional complexity that undermines the purpose of ERISA, DOL should withdraw this guidance. At the very least, the guidance should apply only to states that implement programs with voluntary employer participation.

We thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Amanda Austin". The signature is written in a cursive style with a large initial "A" and a long, sweeping tail.

Amanda Austin
Vice President
Public Policy