The Public Advocate
for the City of New York

Letitia James – *Public Advocate*

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January 19, 2016

VIA ELECTRONIC MAIL
Phyllis C. Borzi
Assistant Secretary
United States Department of Labor
Employee Benefits Security Administration
Office of Regulations and Interpretations
200 Constitution Avenue NW
Room N-5565
Washington, DC 20210

Re: Savings Arrangements Established by States for Non-Governmental Employees
RIN 1210-AB71

Dear Ms. Borzi:

I am New York City's Public Advocate, a city-wide elected position charged with representing residents, especially those most marginalized, to ensure that their interests are protected and that government is working for them. I write as the prime sponsor of local legislation that would begin the process of establishing a retirement savings program for private sector workers in New York City. I am joined on this letter by several of the New York City Council Members who co-sponsor that bill.

Together, we urge you to ensure that large cities, and their significant populations, are not prevented from implementing the type of retirement savings program envisioned by the proposed rule change to the Employee Retirement Income Security Act. The United States Department of Labor's proposed rule reflects the Department's clear understanding of the dire need for policymakers to develop retirement security solutions

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for millions of Americans. However, we are concerned that by not including cities in its proposed rule, in particular those with populations over a certain size – such as one million residents – the Department could significantly thwart the positive objectives of the proposed rule.

There are several reasons why allowing large cities to develop their own retirement savings programs is essential to accomplishing the goals of the proposed rule. To begin with, cities are the major population centers of our country and continue to grow at a faster pace than rural areas and the nation's overall average growth rate. In this way, cities are a vital linchpin in guaranteeing that retirement savings programs are as effective and far-reaching as possible. In New York City alone, the evidence for this is significant. More than 3.5 million individuals work in the private sector within the five boroughs of New York City; an amount greater than the total population of 20 states. And yet, employers offer retirement savings plans to an ever-decreasing percentage of workers, with only 41 percent having access to such plans today, leaving nearly two million workers in New York City without a plan for financial security in their retirement years.

New York City is also a significant population center for senior citizens: over 1.4 million people age 60 and older live in the city, with the number likely to reach more than 1.8 million by 2030, becoming one-fifth of the total population. As these individuals enter retirement, more and more will do so with no retirement savings plan in place. As the Public Advocate for the City, I have witnessed first-hand the experiences of New

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Yorkers who are entering this delicate time in their lives with virtually no support beyond Social Security, confronting serious issues such as homelessness, poverty and hunger. In addition to the human tragedy, the struggles of these individuals impact federal spending for programs such as Section 8 housing vouchers, Supplemental Nutrition Assistance Program (SNAP), Medicaid and other senior- and poverty-based federal assistance.

Cities also tend to have higher rates of immigrants and minorities, two particular demographic groups that are hit hardest by the retirement savings crunch. A 2011 report showed that from 2000 to 2009, the decline of employer sponsorship rates for non-citizens in New York City was more than double that of citizens, 36 percent versus 15 percent. Meanwhile, Asian and Black non-Hispanic workers suffered the greatest decline in retirement plan sponsorship rates, with reductions of 33 and 21 percent, respectively; the rate for Hispanic workers declined by 14 percent (the decline for White non-Hispanic workers was 10 percent). And yet, without a willing state legislature, cities like New York, with its 3.5 million-plus private sector employees, would be precluded from establishing a retirement security plan that could bring some degree of financial relief to these vulnerable populations.

Thanks to the support of Mayor Bill de Blasio, who has also submitted comments on this same issue, we are assured that the New York City government is well-positioned to establish and manage a retirement system such as those envisioned by the proposed rule. The City sponsors a defined benefit pension system, with about $160 billion in assets, while the Deferred Compensation Board oversees the City's deferred

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compensation plan (including 401(k)s, IRAs, and a 457 plan), with more than $15 billion in assets. In addition, the City's budget for Fiscal Year 2016 was greater than $78 billion – a larger budget than the vast majority of *states* across the country. The City's experience and expertise in budgeting and providing retirement benefits to its employees would allow it to put a successful retirement savings program in place for millions of private-sector workers.

Additional considerations lend support to allowing large cities to create their own retirement savings programs. The Department could set a minimum population threshold for eligibility, thereby avoiding the problems that may arise if smaller cities with fewer resources and less experience are allowed to create their own programs. In addition, permitting large cities to establish their own programs, particularly when state legislatures decline to take advantage of this proposed rule, will not necessarily lead to a conflict between state and local retirement savings programs: if a state legislature chooses to create a program for the entire state, that program could simply preempt or incorporate any existing city-level retirement savings program.

We thank you for this opportunity to comment on the proposed rule. We believe that permitting large cities to develop their own retirement savings programs will allow tens of millions of hard-working individuals to look forward to a more stable and secure retirement, and provide a dependable source of income — absolutely crucial for living in New York City beyond one's working years. As the populations of cities continue to increase – with New York City's population estimated to surpass 9 million by 2030 and

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nearly half of the population living at or near poverty levels – the need for city-level retirement savings programs in urban centers such as New York City will become even more pressing. New York City should have the ability to offer these employees the opportunity to safely and prudently invest for their futures.

Sincerely,

Public Advocate for the
City of New York

Andrew Cohen
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Laurie Cumbo
New York City Council
35th District

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New York City Council
24th District

cc: Honorable Thomas E. Perez, Secretary, U.S. Department of Labor
Honorable Charles E. Schumer, U.S. Senator
Honorable Kirsten Gillibrand, U.S. Senator