Phone: 202 628-8866
Fax: 202 628-9800
Website: www.ncrc.org

727 15th Street, NW
Suite 900
Washington, DC 20005

NCRC
OPENING DOORS TO ECONOMIC OPPORTUNITY

January 19, 2016

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

Dear Secretary Perez:

I am writing on behalf of the National Community Reinvestment Coalition (NCRC) concerning the Department of Labor's Notice of Proposed Rulemaking creating the State Savings Arrangement Safe Harbor. State savings arrangements are vital to increasing employee participation in retirement savings programs, which will advance the income security of older Americans. For this reason, NCRC strongly supports establishing a safe harbor for employers that are required to participate in state run retirement savings programs, and we support the expansion of the safe harbor to employers that choose to participate in such programs.

At the outset, we would like to thank the administration for its increased focus on the challenges facing older adults. There is no question that a coordinated and large scale response is needed from government officials, community based advocates, and the aging network to address these challenges, and administration efforts such as the myRA product being offered by Treasury is an example of the innovation that is needed from the federal government to better serve the nation's growing older adult population.

Older adults are facing and grappling with increased economic uncertainty as a result of the economic recession and demographic changes. Retirement income is derived from three main sources: assets, Social Security, and employment-based retirement plans.[1] However, the economic recession continues to have a negative impact on the assets of older adults. In fact, older adults represent the fastest growing percentage of homeowners in foreclosure.[2] Nearly three-fourths of all older adult households are economically vulnerable, meaning they would not be able to handle the financial repercussions of a traumatic life event.[3] Some 60 percent of all women over the age of 65 are unable to cover basic living expenses.[4] Clearly, more must be done to support older adults as they enter retirement.

---

[1] Gordon B. T. Mermin, Sheila R. Zedlewski, and Desmond J. Toohey, "Diversity in Retirement Wealth Accumulation," Urban Institute, The Retirement Policy Program Brief Series, No. 24, December 2008.

[2] AARP Public Policy Institute, "Nightmare on Main Street: Older Americans and the Mortgage Market Crisis," 2012

[3] Tatjana Meschede, Laura Sullivan and Tomas Shapiro and Demos, "From Bad To Worse: Senior Economic Insecurity On The Rise," Institute on Assets and Social Policy at Brandeis University, July 19, 2011.

[4] Wider Opportunities for Women, "Doing Without: Economic Insecurity and Older Americans" No. 2: Gender, March, 2012. Cost of basic expenses is determined by the Wider Opportunities for Women (WOW) US Elder Economic Security Standard™ Index designed by WOW and the Gerontology Institute at the University of Massachusetts Boston.

NCRC

OPENING DOORS TO
ECONOMIC OPPORTUNITY

As stated previously, the traditional arrangement that includes assets, Social Security, and pensions as elements of a sound retirement structure, is increasingly dated.[5] Less than a third of adults over the age of 60 currently receive defined benefit pension income from a former employer.[6] Over time, the income from pensions and personal assets for many older adults has dropped, forcing an increased reliance on Social Security, which is increasingly replacing less of a retiree's pre-retirement income.[7]

As a result, retirees increasingly rely on employer based retirement programs, yet approximately 68 million workers across the country do not have access to an employment based retirement plan.[8] This is why state based retirement plans are so necessary. State based retirement plans can extend savings opportunities to workers who lack access to an employment based retirement plan, and the proposed rule enables states to implement their programs without employers that are mandated to participate being made subject to ERISA requirements.

Necessity of the safe harbor

Without the legal clarity that is provided by a safe harbor for employers participating in state based retirement plans, the risk of Employee Retirement Income Security Act of 1974 (ERISA) preemption will serve as a significant barrier to the adoption and implementation of these types of laws. Without the safe harbor, these saving arrangements are at risk of court challenges that would require the state plan to comply with ERISA.

NCRC also supports expanding the safe harbor to include employers that voluntarily participate in state based retirement savings programs. The proposed safe harbor excludes voluntary employer participants under the rationale that employees will face greater risk of undue influence to enroll by an employer that voluntarily participates in the program.[9] However, in arrangements where the state sets the terms for and administers the program, such safeguards could allow employers to voluntarily participate with no significant burdens to employees who did not want to participate. Therefore, we recommend that Section 2510.3-2(h)(1)(x) of the proposed rules be stricken.

---

5 Ibid. at 1.

6 Frank Porell, Ph.D. and Diane Oakley, "The Pension Factor 2012: The Role of Defined Benefit Pensions in Reducing Elder Economic Hardships," National Institute on Retirement Security, July 2012.

7 Administration on Aging U.S., Department of Health and Human Services, "A Profile of Older Americans: 2012."

8 Copeland, Craig, Employment-Based Retirement Plan Participation, 2014, Employee Benefit Research Institute, Issue Brief No. 405 (October 2014).

9 29 CFR 2510.3-2(d)

NCRC

OPENING DOORS TO
ECONOMIC OPPORTUNITY

Additionally, NCRC supports state based retirement programs that have an opt-out feature. Programs that have an opt-out feature are likely to have about twice the participation as opt-in programs.

Conclusion

NCRC appreciates the opportunity to comment on the DOL's proposed rule. Retirement savings plans have great potential to increase income security for older Americans, particularly considering the stagnation or decline of other sources of retirement income. For this reason, we support the safe harbor and its extension to employers who voluntarily participate in a state savings program. We urge the DOL to finalize and implement this rule as quickly as possible.

Sincerely,

John Taylor
Chief Executive Officer
National Community Reinvestment Coalition