**From:** Steve Malanga [mailto:smalanga@city-journal.org]
**Sent:** Tuesday, January 19, 2016 6:41 PM
**To:** EBSA, E-ORI - EBSA
**Subject:** RIN 1210-AB71

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

*RE: Savings Arrangements Established by States for Non-Governmental Employees; RIN 1210–AB71*

To Whom It May Concern:

The Manhattan Institute for Policy Research is a public policy research organizing with a special focus on state and local fiscal issues. We appreciate the opportunity to comment on the U.S.Department of Labor's ("DOL" or the "Department") proposed rule concerning "Savings Arrangements Established by States for Non-Governmental Employees" ("the Proposed Rule" or "the NPRM").

State governments have accumulated some $1 trillion of debt in their government worker retirement systems, as many as half of all states are now eyeing a move into private-sector pensions. Yet even as states have struggled in the last several years to shore up their deeply indebted worker pension systems, officials in state capitals around the country began arguing that they needed to step in and offer aid to private-sector employees who were without retirement savings plans.

California led the way, passing legislation in 2012 that will ultimately require all businesses with more than five employees to enroll workers in a state-sponsored payroll-deduction savings plan, if a business doesn't offer its own plan. Employees would contribute three percent of their paychecks toward retirement --unless they choose to opt out of the plan--and the state would invest that money and provide workers with a guaranteed return on their dollars that's yet to be determined. Since California enacted its law, three other states have all passed similar legislation, and bills setting up comparable systems have been introduced in 21 other states.

States have said that they would not go ahead with these plans unless they could be exempted from operating under the federal Employee Retirement Income Security Act of 1974, which sets out minimum standards for running a retirement plan for private-sector workers and makes the administrators of a plan potentially liable if they mismanage it.

Because ERISA only applies to private workers, states already have license to operate free of the law in their own government-employee pension systems, and the results have not been salutary. Unfettered from the minimum funding requirements that ERISA sets out, for instance, state and local politicians have consistently underfinanced their pensions systems. States have also employed accounting standards that are less rigorous than those imposed on private pensions, thereby sometimes minimizing financial problems. Tellingly, three of the four states that have already passed legislation to set up these plans—California, Illinois and Connecticut--have among the most deeply indebted government worker pension plans, having amassed  at least $300 billion in debt.

The states have said they would operate these new private plans in a fiscally conservative manner. Taxpayers would not liable for any shortfalls, backers of these plans assert. The Obama administration seems intent on taking the states at their word that they can accomplish those aims despite their track record on worker pensions. "State administration of the voluntary [pension] program," the Department of Labor observes, "presumably ensures that the program will be administered in accordance with the interests of the state's citizens."

The California Department of Finance has warned that the state's plan would have high start-up costs and face difficulty in guaranteeing workers even a modest rate of return without exposing taxpayers to large costs and steep potential liabilities. Moreover, the department raised concerns about an expanding state role in retirement policy which could crowd out private competitors.  "There is nothing to prevent a business that currently offers its employees a more generous retirement plan from dropping it in favor of the state-sponsored plan," the department warned.

Indeed, the current laws could significantly alter the landscape for financial services in this country by shifting a huge part of retirement savings to plans controlled by the public sector. California alone estimates that it would collect some $6 billion in worker contributions during the first year after it established its private savings plan. That migration of funds would become even more likely because the Obama administration is simultaneously proposing controversial new rules to tighten standards for brokers who provide investment advice to private-sector retirement accounts. A study for the Financial Services Institute estimates that the steep costs of complying with the so-called fiduciary-duty proposal, estimated at $3.9 billion for private investment advisors, would spark consolidation among investment firms even as the states moved into their turf.

Although states are officially describing these new private plans as individual accounts, in California and other places the money would actually be pooled and invested by state-chosen advisors. States already control more than $3 trillion in assets through their government worker pensions, and officials in some places have aggressively invested that money to help shape political agendas.

In 2011, for instance, the investment staff of the California Public Employees' Retirement System, the nation's largest government worker pension fund, reported that it had to follow 111 different investing directives on the environment, social conditions and corporate governance imposed by the state legislature and the funds' board. Just recently, the California legislature voted to have Calpers divest from fossil fuel stocks. The sponsor of that legislation declared that it would send a "moral message that California will not invest in those businesses that burn our planet in the name of profit."

There are any number of initiatives that states could pursue to address private sector pensions without the risk of the new plans. The federal government could modify the so-called Simple IRA, designed for use by firms with fewer than 100 employees, by eliminating or reducing the minimum contributions that a firm must make to offer the IRA to workers. Local governments wishing to help spur savings could adopt the model of Washington State's small business retirement market, which seeks to match businesses with private investment firms that design and administer retirement plans.

We appreciate your consideration of these comments. If we can provide you with any additional information or resources, please do not hesitate to contact me.