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Department of Commerce

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

**Attn: Proposed rule: RIN 1210-AB76  
Savings Arrangements Established by State Political Subdivisions for Non-Governmental  
Employees**

Ladies and Gentlemen:

The Washington State Department of Commerce (“Commerce”) appreciates the opportunity to comment on the Department of Labor (“Department”) Proposed Rule 29 CFR Part 2510 that would amend a regulation that describes how states may design and operate payroll deductions savings programs.

**Comments RE: Proposed Rule regarding savings arrangements established by political  
subdivisions for non-governmental employees (RIN 1210-AB76)**

Commerce thanks Secretary Perez and the Department for their extraordinary efforts to clarify the relationship between state payroll deduction savings programs, political subdivisions, and ERISA.

Commerce supports expansion of the safe harbor created in previous rulemaking (RIN 1210-AB71) to state political subdivisions. We believe doing so would create the environment necessary for political subdivisions to institute and implement initiatives to reduce retirement savings gaps faced by non-government employees.

Commerce is concerned that the one of the Department’s three criteria used to define “qualified political subdivision” would unnecessarily exclude political subdivisions in Washington State and other states where the statewide retirement savings program for private sector employees uses the **marketplace approach**. The marketplace approach is a public-private partnership wherein small businesses and individuals may *voluntarily* participate in any retirement savings arrangement offered via a state-operated online portal containing retirement savings arrangements that meet certain state-specified requirements, such as limits on fees charged to investors and/or employers, and are provided by private sector financial services firms in compliance with existing state and federal rules and regulations. As detailed in RIN 1210-AB74/ Interpretive Bulletin 2015-2, state marketplace retirement savings initiatives are fundamentally different from statewide retirement savings programs covered by the safe harbor provisions of this regulation in that participation in them is *voluntary* on the part of both employer and worker, and that *the state is not providing nor sponsoring a payroll deduction IRA-type vehicle for retirement savings*.

Proposed Reg § 2510.3-2(h)4(iii) conditions the safe harbor on the political subdivision not being in a state that has a statewide retirement savings program for private sector employees. On page 15 of Proposed Rule Overview, footnote 32 includes New Jersey Small Business Retirement Marketplace and

Washington State Small Business Retirement Marketplace in the list of states with laws to implement some form of statewide savings programs for private sector employees. Commerce believes that a retirement savings initiative implemented by a political subdivision would be mutually beneficial to Washington's Small Business Retirement Marketplace (and with the marketplace approach in general) and we support the idea sub-state jurisdictions pursuing safe harbor retirement savings initiatives for non-government employees in an effort to reduce the retirement savings gap faced by those workers. We have evaluated to potential for conflicting or confusing overlap between the two policies and find none.

### **Conclusion**

Commerce strongly supports the Department's goal of allowing both states and political subdivisions to establish retirement savings initiatives to close savings gaps through a number of allowable models, including the marketplace approach and payroll deduction programs. **The marketplace approach is mutually beneficial to a sub-state "Secure Choice" style approach. We respectfully request the Department clarify that a statewide marketplace approach would not preclude a political subdivision from, within its authority, implementing a retirement savings initiative.**

Respectfully submitted,



Brian Bonlender (via email)  
Director, Washington State Department of Commerce

Cc: Barbara Dunn, Director of Communications