SEATTLE CITY COUNCIL | POSITION 8
COUNCILMEMBER TIM BURGESS

VIA E-MAIL: e-ORI@dol.gov
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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, DC 20210

RE: Proposed Rule on Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees (RIN 1210-AB76)

Dear Secretary Perez and Assistant Secretary Borzi:

I write to you to offer my comments regarding the Proposed Rule for payroll deduction savings programs for cities and other political subdivisions. By way of introduction, I am a Seattle City Councilmember who serves as chair of the Council's Affordable Housing, Neighborhoods & Finance Committee. As such, I also serve as chair of the Seattle City Employees' Retirement System's Board of Administration.

I commend your leadership in expanding access to workplace retirement savings plans through the issuance of RIN 1210-AB71, which provides a safe harbor from ERISA for state payroll deduction savings programs with automatic enrollment ("auto-IRA"), and this Proposed Rule that would expand the safe harbor to programs established by certain political subdivisions. As the Department of Labor has noted, the lack of adequate retirement savings is a grave problem for many Americans and it is well established that individuals are far more likely to save for retirement if an option is made available to them in their workplace. Research has also shown that automatically enrolling individuals in workplace plans, while providing them with the ability to opt out, leads to further increases in retirement savings. By providing increased access to workplace plans and allowing for automatic enrollment, RIN 1210-AB71 and this Proposed Rule give policymakers an important and effective means of addressing the serious issue of retirement security.

Unfortunately, as currently drafted, Seattle would not qualify for the safe harbor established in this Proposed Rule because it excludes political subdivisions located in a state that has <u>any type</u> of state-wide retirement savings program. Specifically, Seattle does not meet this criterion due to Washington State's adoption of the Small Business Retirement Savings Marketplace. While the marketplace is helpful in reducing the barriers that small businesses face in establishing their own workplace retirement savings plans, it does not provide for automatic enrollment (of employers and employees) and is thus expected to leave a large portion of the workforce without access. I believe the proposed criterion can be modified and still fully meet the Department's goal of preventing overlap between programs operated by a state and its political subdivisions by only excluding political subdivisions located in states with a state-wide auto-IRA program.

I expand on this primary concern and provide other comments regarding this Proposed Rule's specific provisions as follows:

1. **Paragraph (h)(4)(iii) of this Proposed Rule should be amended so that it only excludes political subdivisions located in a state with a state-wide <u>payroll deduction savings program with automatic enrollment</u>, rather than excluding those political subdivisions located in a state with *any* state-wide retirement savings program (i.e. programs that include those outlined in Interpretive Bulletin 2015-02).**

The Department has expressed concern that an auto-IRA program operated by a political subdivision would overlap or be duplicative of a state-wide retirement savings program within the state that it is located. This concern is appropriate when both a state and one of its political subdivisions want to establish separate auto-IRA programs[1]. However, this concern does not seem warranted if a state were to only establish a savings program described in Interpretive Bulletin 2015-02 (e.g. a marketplace, prototype plan or multiple employer plan). Each of these ERISA-covered programs is intended to accomplish a very worthy goal of increasing the number of employers who voluntarily establish their own workplace retirement savings plan by reducing the barriers that these employers may face in doing so. Auto-IRA programs are instead targeted exclusively on those workers whose employers choose not to establish their own workplace retirement savings plan. As such, a local auto-IRA program would, by definition, not overlap with a state-wide program described in Interpretive Bulleting 2015-02 because employers who offer a workplace retirement savings plan would be excluded from the local auto-IRA program. Rather than create overlap, a local auto-IRA program would be complementary by addressing the needs of all workers, including those whose employers choose not to establish their own workplace retirement savings plan.

2. **Paragraph (h)(4)(ii) and (h)(4)(iii) of this Proposed Rule should be amended to remove the risk of a political subdivision losing access to the safe harbor.**

The Department acknowledges that, as currently drafted, this Proposed Rule introduces the risk that a political subdivision could lose access to the safe harbor if its population falls below that of the least populous state or if its State establishes a state-wide retirement savings program. This risk may unintentionally dissuade political subdivisions from establishing an auto-IRA program. I support the Department's suggestion that the phrase "at the time it establishes its payroll deduction savings program" be added to the end of Paragraph (h)(4)(ii). I also recommend that this phrase be added to the end of Paragraph (h)(4)(iii) in addition to the amendment suggested above (1). This does not presuppose that a local auto-IRA program should continue after the establishment of a state-wide retirement savings program, but rather that each state is best positioned to evaluate and determine an appropriate course.

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[1] Similarly, the issue of overlap and duplication may exist between auto-IRA programs established by geographically larger and more encompassing political subdivisions (e.g. counties) and geographically smaller political subdivisions (e.g. cities) to the extent that the larger political subdivision has the authority to establish such a plan under state law, has jurisdictional authority over smaller political subdivisions and establishes an auto-IRA program that applies broadly (i.e. does not exclude employers in smaller political subdivisions).

3. Paragraph (h)(4)(ii) should allow political subdivisions that fall under the minimum population threshold to petition the Department so that it can evaluate capability on a case by case basis.

The Department is appropriately concerned that certain political subdivisions may lack the experience, capacity and resources to establish and oversee a payroll deduction savings program. This Proposed Rule relies upon population alone to determine whether a political subdivision is sufficiently capable to manage such a program. While population is relevant and while Seattle meets the proposed minimum threshold, I believe that other criteria may also demonstrate that a political subdivision has the appropriate experience, capacity and resources should its population fall below the minimum threshold. For example, a political subdivision that operates a defined benefit plan or a 457 deferred compensation plan would appear sufficiently capable given the similarity of those plans to an auto-IRA program. Rather than prescribe such alternative criteria, this Proposed Rule could be amended to allow political subdivisions that fall under the minimum population threshold to petition the Department so that it can evaluate capability on a case-by-case basis (i.e., I do not believe that additional criteria should be added but rather that this Proposed Rule could be revised to allow the Department to consider requests from political subdivisions on a case-by-case basis if the population threshold is not met).

I applaud the Department's great efforts to expand retirement security for millions of Americans. I appreciate the opportunity to comment on this Proposed Rule to allow cities and other political subdivisions, like Seattle, to assist those most disadvantaged workers who do not have access to workplace retirement savings plans.

Respectfully Submitted,

Tim Burgess
Chair, Seattle City Employees Retirement System Board of Administration