THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

September 28, 2016

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

Via E-mail: e-ORI@dol.gov

Attn: Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees (RIN 1210-AB76)

To Whom It May Concern:

As the Comptroller of the City of New York, I appreciate the chance to comment on the proposal by the Department of Labor ("Department") to expand the safe harbor exemption from the Employee Retirement Income Security Act ("ERISA") for certain payroll deduction savings plans in regulation § 2510.3-2(h) ("Safe Harbor"). This proposal would clarify that the Safe Harbor also covers programs established and maintained by qualified political subdivisions.

New York City's pension system is the 4th largest in the nation and 15th largest in the world, with more than $160 billion dollars under management. As Comptroller, I serve as a member of the Boards of Trustees of four of the five New York City Public Pension Funds (the "Funds") and chief investment advisor to, and custodian of assets of, all five Funds. As the investment advisor to the Funds, the Comptroller has the fiduciary responsibility of investing the Funds, pursuant to direction from their Boards of Trustees, for more than 700,000 retirees and beneficiaries. Investing the City's pension funds is one of the Comptroller's most critical tasks.

At the same time, 57 percent of New York City private sector workers lack access to a retirement plan at their place of employment. In early 2015, I convened the New York City Retirement Security Study Group, a panel composed of national academic leaders with broad expertise in all aspects of retirement security. Chaired by Scott Evans, my office's Chief Investment Officer, the members include: Dr. Teresa Ghilarducci; Dr. David Laibson; Dr. Olivia S. Mitchell; Dr. Alicia Munnell; Dr. Joshua Rauh; and Dr. Stephen P. Zeldes. The group has been working diligently to develop innovative and affordable workplace retirement savings options for New Yorkers.

First and foremost, I commend the Department for its proposed inclusion of New York City and other municipalities in the Safe Harbor. This burgeoning retirement savings crisis threatens the well-being of retirees and the financial health of local governments. By broadening the scope of the Safe Harbor to include cities and other political subdivisions, the Department is providing important space for responsible local governments to craft "auto IRA" programs to help workers prepare for retirement and reduce the burden on taxpayers to provide support for retirees lacking sufficient financial resources.

We largely concur with and support the provisions in the proposed rule. To make the final rule as effective as possible in achieving its objectives, we believe that several of the provisions would benefit from further refinement.

We support limiting the Safe Harbor to political subdivisions of states that satisfy a criterion such as minimum population. However, we also believe that the Department should consider the inclusion of an *alternate* "experience" criterion. Accordingly, we suggest that a qualified political subdivision would either have to exceed the currently proposed population threshold or currently sponsor a governmental defined benefit, defined contribution, 457(b) and/or 403(b) plans that exceeds either $2 billion in total assets under management or a combined total of 10,000 active and retired members. We believe that a city or other governmental unit sponsoring or administering a plan of that size has the in-house expertise and infrastructure to prudently develop and sponsor an auto IRA program.* While New York City would qualify under all such criteria, this approach would allow localities with demonstrated experience in, and administrative infrastructure for, operating a retirement savings program to have access to the Safe Harbor.

We also recommend that to be eligible for the Safe Harbor, a subdivision's auto IRA program would only have to meet one of the alternative standards as of the date the program first becomes "operative" (defined for these purposes as established under applicable law and ready to accept contributions), even if the subdivision subsequently ceases to satisfy one of the standards due, for example, to a change in population.

With regard to the proscription that the qualified political subdivision cannot be within a state that has a state-wide retirement savings program for private sector employees, we acknowledge that it is preferable for cities to create plans with the cooperation of the state and to avoid overlapping state and local programs. However, once a city or other subdivision establishes an auto IRA program under the Safe Harbor, it should be left to applicable state law to determine the effect that a later-enacted state program has on the local program and how and whether to transition IRAs and participants to the state program. Thus, we urge the Department to permit in such cases the continuation of a subdivision's Safe Harbor program for all existing and future employers and employees (provided that the terms of the Safe Harbor are otherwise satisfied) except to the extent, if any, otherwise provided under state law.

Finally, we recommend that the proposal clarify that only an operative state auto IRA program would prevent a political subdivision of that state from subsequently establishing its own program. The existence of other state programs, such as a marketplace or state-sponsored open

* Under its deferred compensation program, City employees are eligible to participate in a 401(k) and 457 plan as well as both traditional and Roth IRAs. The City deferred compensation plans have combined assets in excess of $15 billion. Two City pension funds also sponsor 403(b) plans, with combined assets in excess of $28 billion.

multiple employer plan, should not prevent a subdivision from establishing a Safe Harbor auto IRA.

Thank you for the opportunity to comment on the proposed regulation. These proposed changes to the provisions, if adopted, would, in our opinion, enhance and clarify an already well-conceived regulation. We thank the Department for its outstanding efforts to advance retirement security and look forward to working together to provide access to retirement savings vehicles that are currently unavailable to New York City workers.

Sincerely,

Scott M. Stringer
New York City Comptroller