



*The Voice for Public Pensions*



Submitted via <http://www.regulations.gov>

September 29, 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

Re: RIN 1210-AB76; Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees

Ladies and Gentlemen:

These comments are directed towards the recently proposed rule regarding Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees (“Proposed Rule”).

Collectively, the four labor organizations joining in this letter represent more than 8 million workers. These include low-wage service workers to professionals, including people of all ages and strata of American society. Many of these individuals are currently employed, while others are retired. In addition, the National Conference on Public Employee Retirement Systems is a trade association that represents pension funds that hold assets in trust for more than 20 million public employees and retirees. Individually and collectively, our organizations have a profound interest in working to ensure the retirement security, not only of our members, but for all Americans.

As the Department of Labor (“Department”) is well aware, the retirement security of many millions of Americans is at risk. While Social Security, Medicare, and Medicaid provide a significant and necessary base, it is not nearly enough.

It is a tragedy that fewer and fewer workers have access to a defined benefit pension through their workplace, particularly given the fact that defined benefit plans provide superior economic efficiency and retirement security. Thus, far too many are left only with their own savings and the modest Social Security benefits for their retirement income. Worse yet, 68 million workers have no access to any

retirement savings plan at work and relatively few of them are saving for retirement on their own. As a result, nearly 40 million working age households (45 percent) do not own any retirement assets, whether a defined benefit pension, a work-sponsored 401(k), or even an IRA. Even among those who are saving for retirement, the amount saved is inadequate to provide for genuine retirement security. The Government Accountability Office concluded earlier this year that “among those with some retirement savings, the median amount of those savings is about \$104,000 for households age 55-64,” which would yield an inflation protected annuity of just \$310 a month.

Furthermore, work-based retirement programs do not cover many millions of workers at the lower end of the economic spectrum who need them the most. It is into this gap that the states have begun to step into the breach and to consider different mechanisms to address what otherwise will become a national crisis. The Department’s Final Rule published on August 30, 2016 clarified various regulatory issues and cleared a path for states who have enacted and will enact legislation to make work-based retirement savings plans more accessible for millions of workers.

This proposed rule goes a step further and would clarify that certain large sub-state jurisdictions can enact retirement savings plans as well.

We commend the Employee Benefits Security Administration and the Department of Labor for clarifying how state, and now sub-state jurisdictions such as cities and counties, can move forward with implementing retirement savings plans. We strongly support the efforts underway in many states and cities. Therefore, our comments are not intended as criticisms of the intent of the Proposed Rule. Instead, our comments are intended to strengthen the Proposed Rule and help states and sub-state jurisdictions bring retirement security to more workers, as well as provide greater clarity.

#### Comments on the Proposed Rule

1. Definition of a Qualified State Subdivision, Population Standard—Currently, the Proposed Rule would limit access to the safe harbor to sub-state jurisdictions that have populations at least as great as the least populated state.

We appreciate that some standard must be in place to ensure that sub-state jurisdictions have the capacity to implement and operate a retirement savings program for private sector workers. The population standard announced in the Notice of Proposed Rulemaking is a reasonable proxy. However, we believe that the Department should clarify that once any jurisdiction meets the standard and enacts a program that such jurisdiction is a qualified state subdivision regardless of any future population changes that may place it below the threshold. In short, this should be a one-time hurdle that must be passed at the time of implementation of a program, not a recurring test.

While we endorse the Department’s use of a population standard as a proxy for a substate jurisdiction’s capacity to operate a private sector retirement savings program, we believe that meeting the population standard alone should not automatically qualify a substate jurisdiction into the safe harbor. We believe that substate jurisdictions must demonstrate to the Department that they have the capacity to collect payroll and administer a program. This could be demonstrated by a substate jurisdiction having in place administrative and enforcement functions related to the collection of income, sales or other similar taxes. Absent this existing experience, substate jurisdictions should be required to submit plans that include mechanisms to secure from employers the timely contribution of payroll contributions, timely deposit into a worker’s retirement plan, and processes and programs to identify delinquent contributions, etc.

2. Location in a State That Has a Statewide Retirement Savings Program—The Proposed Rule would limit access to the safe harbor to substate jurisdictions in States that do not have a statewide retirement savings program.

We believe that further clarification is needed as to what constitutes a statewide retirement savings program. In order to ensure the widest possible access to retirement savings plans at work, we believe that the prohibition should apply only when a statewide program is a mandatory program for all employers. As such, “marketplace” programs that have been enacted in New Jersey and Washington, for example, and which do not mandate employer participation, should not prohibit qualifying substate jurisdictions in those states from enacting retirement savings programs.

3. Transitions When a State Subsequently Enacts a Statewide Mandatory Retirement Savings Program after Substate Jurisdiction—The Proposed Rule does not address what policy may ensue if a state enacts a mandatory plan after a substate jurisdiction enacts a private sector retirement savings program.

We believe that the Final Rule should not prohibit any sub-state jurisdiction from continuing to operate or implement both 1) a safe harbor program or 2) an ERISA-covered multiple employer plan. If a state establishes a statewide retirement savings program after a political subdivision has done so, the Department should leave to the state the determination of the relationship between the two programs and whether the political subdivision’s program will continue independent of the-statewide-program.

Should state law require a city with a retirement savings program to close, the regulations should require that state retirement savings programs provide for a smooth transition for workers and employers. Such transition plans should include mechanisms to represent the perspectives of plan participants. This would include ensuring that representatives of plan participants are a part of any body tasked with developing and implementing transition plans.

4. Demonstrated Capacity for Operating a Payroll Deduction Retirement Plan by Operating a Pension Plan with Sizable Assets--In the Preamble to the Proposed Rule, the Department notes that it considered, but would not require, that substate jurisdictions demonstrate the capacity to operate a payroll deduction retirement plan by also sponsoring and managing an employee pension plan with sizable assets. Indeed, we offered this as a potential consideration in our comment letter on the NPRM related to the state private sector retirement savings plans. While operating a sizable pension plan for employees could be used as evidence that a jurisdiction has the organizational and management capacity to execute a retirement program, the absence of operating a pension plan should not disqualify a substate jurisdiction from implementing a private sector savings plan. There are many reasons why a sub-state jurisdiction had not previously sponsored a retirement plan. For example, in some states, large local governments participate in state-managed municipal pension plans. A requirement that sub-state jurisdictions operate their own employee pension plans could have the unintended consequence of disqualifying large jurisdictions in states with state-managed municipal pension plans.

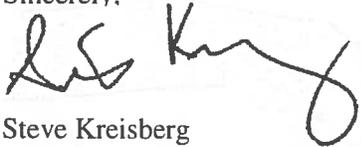
5. Responsibility for Securing Employee Savings—The purpose of creating these publicly-managed retirement plans is to increase the retirement security of workers. We believe that the Department should encourage or require that retirement savings programs established by a qualified political subdivision include one or more representatives of contributing employees in the governance of its program. Worker representation will help ensure the program is operated in the best interests of participants and beneficiaries.

Alignment with Interpretive Bulletin 2015-02

In November 2015, the Department issued Interpretive Bulletin 2015-02 relating to state savings programs that sponsor or facilitate plans covered by the Employee Retirement Income Security Act of 1974 ("Interpretive Bulletin"). This Interpretive Bulletin clarified that states may enact and implement optional retirement savings plans that allow for employer contributions. Given that the Department is now proposing rules to extend the safe harbor to substate jurisdictions to enact and implement mandatory auto-enrollment retirement savings programs, we believe that the Interpretive Bulletin should be updated to allow these same sub-state jurisdictions to operate ERISA-covered plans that allow for employer contributions.

In conclusion, while this letter aims to clarify some aspects and anticipate possible future issues, we believe the EBSA has done an excellent job thus far in building a framework that will lead to improved retirement readiness for millions of Americans.

Sincerely,



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