



**GEORGETOWN UNIVERSITY**  
**McCourt School of Public Policy**

Submitted via email to: [e-ORI@dol.gov](mailto: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, D.C. 20210

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

Dear Assistant Secretary Borzi:

The Georgetown University Center for Retirement Initiatives (“Center”) appreciates your leadership finalizing the regulation to clarify when an automatic IRA established through state law and administered by a state would not make it subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). The Center requested as part of the public comment process that the U.S. Department of Labor (DOL) consider expanding the scope of this new safe harbor to include state political subdivisions. We applaud DOL for taking this recommendation into consideration and issuing this proposed rule.

The Center for Retirement Initiatives is a research center of the McCourt School of Public Policy. The Center was founded with the mission to strengthen the retirement security of American families by developing and promoting the bipartisan adoption of innovative state policies, legislation, and administrative models, including promoting the value of pooled funding and professional management, to expand the availability and effectiveness of retirement solutions. The Center performs a vital role assisting states by:

- Connecting state policymakers, scholars, and industry experts;
- Analyzing legislative and regulatory developments and assisting with program design;
- Sharing research, best practices, and success stories with state policymakers; and

- Serving as a resource to all states and stakeholders in addressing the challenge of achieving retirement security for more Americans and promoting policies that will strengthen the economy.

Research has shown that workers are much more likely to save if they have access to way to do so through their employers. Unfortunately, more than half of the private sector workforce – more than 50 million Americans – do not have access to a retirement savings plan through their employer. This lack of access has already left too many Americans with too little saved for their retirement. According to the U.S. Government Accountability Office<sup>1</sup>, about half of households age 55 and older have no retirement savings in a 401(k) plan or an IRA and, for those with some retirement savings, “the median amount of those savings is about \$104,000 for households age 55-64 and \$148,000 for households age 65-74, equivalent to an inflation-protected annuity of \$310 and \$649 per month, respectively. Social Security provides most of the income for about half of households age 65 and older.”

Allowing programs to be established at all levels of government would play a key role in expanding access to workplace savings programs, especially in states that do not themselves elect to establish their own state-sponsored retirement programs, such as a state-based payroll deduction IRA program, or an ERISA covered program, such as a state-sponsored multiple-employer program (“MEP”), as outlined in DOL Interpretive Bulletin 2015-02 effective November 18, 2015. Citizens who do not live in states that establish such programs should be permitted to look to cities and other governmental entities and instrumentalities to expand their access to ways to save for retirement. Many cities, counties and other governmental entities and instrumentalities have experience managing retirement plans for public employees, as states do.

We commend the DOL and the Employee Benefits Security Administration for issuing the final rule on August 30, 2016 that clears the path for states that have enacted or will consider legislation to establish retirement programs for the millions of private sector workers who currently lack access to such programs. This proposed rule goes a necessary step further to allow state political subdivisions to also enact such programs.

## COMMENTS ON THE PROPOSED RULE

We strongly support the efforts already underway in the states and in cities. In establishing the criteria for establishing a “qualified political subdivision” in section (h) (4), the Center would respectfully request the Department further refine these criteria to consider the following:

- 1) **Qualified Political Subdivision: Population Standard (paragraph (h) (4) (ii)).**
  - a. Amend paragraph (h) (4) (ii) to clarify that a political subdivision must not only meet the population criterion but also demonstrate the capacity to collect payroll and administer such a program. This could be demonstrated, for example, by a state political subdivision having in place administrative and enforcement functions related to the collection of taxes, such as income, sales or other similar taxes. If a political subdivision does not have such

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<sup>1</sup> U.S. General Accountability Office (GAO), *Retirement Security: Most Households Approaching Retirement Have Low Savings* (GAO 15-419), May 2015.

experience, then it must be required to submit plans that show how it would secure from employers the timely collection of payroll contributions, the timely deposit into a worker's account, and the processes for enforcement if contributions are delinquent.

- b. Based on the above recommended refinement of this criterion, we also would suggest that DOL make it clear that a political subdivision that meets this requirement of the safe harbor at the time it establishes its plan cannot have such qualification revoked if there is change in population once the program is operational. DOL could add language at the end of (h) (4) (ii) "at the time it establishes its payroll deduction savings program."

2) **Located in State That Has a State-Wide Retirement Savings Program (paragraph (h) (4) (iii)).**

Amend paragraph (h) (4) (iii) to allow a political subdivision to establish its own plan under the safe harbor as long as it is not located in a state that has already established a retirement program for private sector employees that mandates employer participation with the auto-enrollment of workers.

While we understand the Department's concern about the potential for overlapping jurisdictions and programs, if a state has established a voluntary marketplace or other non-mandatory program as outlined in Interpretive Bulletin 2015-02 (e.g., a marketplace, a prototype plan or multiple-employer plan), the political subdivision should be allowed to establish its own mandatory retirement program. The intent understandably is to prevent employers from being required to participate in two programs.

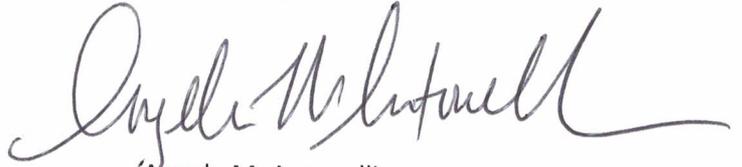
We would point DOL to Washington State as an example, where the state is currently implementing a voluntary marketplace but has expressed its support should Seattle have the authority through the safe harbor to establish its own program. Unfortunately, as currently drafted, the proposed rule would not permit Seattle to establish its own program because Washington State has acted to establish its own "state-wide retirement savings program for private-sector employees." Thus, this DOL criterion as proposed already thwarts the will of the states and their political subdivisions to take action they deem important to expanding retirement savings.

- 3) **If a State Acts After a Political Subdivision Has Already Established a Program.** If a political subdivision takes action first to establish its own retirement savings program under the safe harbor and the state subsequently establishes its own mandatory state-wide program, the DOL should leave it up to states to determine the appropriate course of action, such as the future relationship between the two programs and whether the political subdivision's program will continue independent of the state's program. Any final rule should not prohibit any political subdivision from continuing to implement or operate its own program (whether it be under the safe harbor or an ERISA covered plan, such as a MEP) if it is permitted by the state. However, if a state does determine that a political subdivision's plan must be merged into the state-wide plan, the final rule should require that the state provide a reasonable period of time to allow for a smooth and collaborative transition that includes representatives from both the state and subdivision programs working together.

- 4) **Request for Comment on Other Possible Criteria.** DOL asks for comments on another possible criterion that it did not include in this proposed rule such as whether or not “the political subdivisions have a demonstrated capacity to design and operate a payroll deduction savings program, such as by maintaining a pension plan with substantial assets for employees...” The Center agrees that the population test along with our recommended clarification would be sufficient and this additional criterion would not be necessary.
  
- 5) **Update the Interpretive Bulletin to Include State Political Subdivisions.** As we previously requested in our comment on the state proposed rule and the DOL did include in footnote 5 of this proposed rule related to state political subdivisions, DOL should formally update Interpretive Bulletin 2015-02 that applies to retirement savings options for private sector workers through state-sponsored ERISA-covered retirement plans to also cover state political subdivisions.

The Center applauds the Department for its work to strengthen retirement security for all Americans and to give states and their political subdivisions the freedom and flexibility to lead and innovate in the development of options to expand access to retirement savings arrangements for private sector workers.

Respectfully submitted,



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Center for Retirement Initiatives