

**MEMO# 30488**

December 19, 2016

# **DOL Amended Final Rule on ERISA Safe Harbor for State and Political Subdivision Auto-IRA Programs**

[30488] December 19, 2016 TO: ICI Members SUBJECTS: Pension RE: DOL Amended Final Rule on ERISA Safe Harbor for State and Political Subdivision Auto-IRA Programs  
On December 19, 2016, the Department of Labor (DOL) released a final amended regulation relating to retirement savings arrangements established by states and qualified state political subdivisions for non-governmental employees.[\[1\]](#) The regulation extends the existing safe harbor from ERISA for state-mandated payroll deduction IRA programs to the same programs established and maintained by “qualified political subdivisions” (e.g., cities or counties that meet specified criteria outlined below), as proposed earlier this year.[\[2\]](#)

The existing safe harbor from ERISA coverage for states[\[3\]](#) is conditioned on the state payroll deduction IRA program meeting various criteria, including, among others, that the program is established pursuant to state law, state law requires the employer’s participation, the state assumes responsibility for the security of payroll deductions and employee savings, participation in the program is voluntary for employees (which includes opt-out arrangements), and the employer’s involvement in the program is limited to certain ministerial acts. The new amended final rule, like the proposal, adds the term “or qualified political subdivision” wherever the term “State” appears in the regulation.

## **Definition of Qualified Political Subdivision**

Paragraph (h)(4) of the final rule provides that the term “qualified political subdivision” means any governmental unit of a state, including a city, county, or similar governmental body, that:

- (i) Has the authority, implicit or explicit, under state law to require employers’ participation in the program; and
- (ii) At the time of the enactment of the political subdivision’s payroll deduction savings program:
  - (A) Has a population equal to or greater than the population of the least populated state, excluding the District of Columbia and US territories (currently Wyoming, with approximately 600,000 residents);
  - (B) Has no geographic overlap with any other political subdivision that has enacted a mandatory payroll deduction savings program for private-sector employees and is not located in a state that has enacted such a program statewide; and

(C) Has implemented and administers a plan, fund, or program that provides retirement income to its own governmental employees, or results in a deferral of income by its employees for periods extending to the termination of covered employment or beyond.

This definition is similar to the proposed definition of “qualified political subdivision,” but includes some changes. The final rule specifies that the measurement of the population requirement is at the time of enactment of the political subdivision’s program. The final rule also modifies the proposed criterion relating to location in a state that has adopted a state-wide retirement savings program for private sector workers, by (1) clarifying that the type of state-wide program that would disqualify a political subdivision is a *mandatory* payroll deduction savings program (as opposed to a voluntary plan or marketplace program) and (2) adding that the political subdivision can have no geographic overlap with another political subdivision that has enacted a mandatory payroll deduction savings program. Lastly, in an attempt to ensure the political subdivision has a demonstrated capacity to establish and oversee such a program, the final regulation adds a new requirement that to qualify, a political subdivision must offer a retirement plan for its own governmental employees.

### **Amendment to Safe Harbor Criteria**

The final regulation also amends paragraph (h)(1)(iii) of the safe harbor criteria applicable to state and political subdivision programs, which previously required that the state assume responsibility for the security of payroll deductions and employee savings. The amended final rule provides that the state or qualified political subdivision must assume “responsibility for the security of payroll deductions and employee savings, *including by requiring that amounts withheld from wages by the employer be transmitted to the program promptly and by providing an enforcement mechanism to assure compliance with this requirement*” (emphasis added). The addition of this language is intended to clarify and strengthen the requirement for assuming responsibility for the security of payroll deductions, in response to comments from ICI and others regarding a lack of consumer protections and clear standards in the safe harbor rule.

In this regard, the final amended regulation also adds a new paragraph (h)(5) at the end, providing a special safe harbor for meeting the prompt transmittal requirement:

For purposes of paragraph (h)(1)(iii) of this section, amounts withheld from an employee’s wages by the employer are deemed to be transmitted promptly if such amounts are transmitted to the program as of the earliest date on which such contributions can reasonably be segregated from the employer’s general assets, but in no event later than the last day of the month following the month in which such amounts would otherwise have been payable to the employee in cash.

DOL notes in the preamble that this standard closely follows the standard for SIMPLE IRA plans, as set forth in 29 CFR 2510.3-102(b)(2).

### **Effective Date**

The amended final rule is effective 30 days after the date of publication in the Federal Register. Publication is scheduled for December 20, 2016, which would put the effective date at January 19, 2017 (one day prior to the Presidential inauguration).

Elena Barone Chism  
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**endnotes**

[1] The amended final rule is available here:  
<https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-30069.pdf>. A Fact Sheet is available [here](#) and a News Release is available [here](#).

[2] See ICI Memorandum No. 30172, dated August 25, 2016. *Available at* [https://www.ici.org/my\\_ici/memorandum/memo30172](https://www.ici.org/my_ici/memorandum/memo30172).

[3] 29 CFR 2510.3-2(h).

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