

DOL Green Lights Retirement Programs Run by Cities and Counties

Recently issued guidance expands the DOL’s state-based retirement safe harbor rule to political subdivisions under specified conditions. As such, cities and counties – in addition to states – now have the DOL’s blessing to require private employers that do not sponsor a retirement savings plan for their entire employee population to facilitate employee participation in a government-run retirement program.

Background

In August 2016, the DOL issued a final rule setting forth parameters for an IRA established and maintained under a state payroll deduction savings program to be exempt from ERISA coverage – and thereby avoid ERISA’s many statutory and regulatory compliance requirements. At the same time, the DOL issued a notice of proposed rulemaking seeking input on extending the safe harbor to state political subdivisions such as cities and counties. (See our [August 29, 2016 For Your Information](#).)

DOL Extends Safe Harbor to Political Subdivisions

On December 19, 2016, the DOL [amended the final regulation](#) on state-run retirement programs to cover “qualified state political subdivision” programs that meet certain requirements. DOL defined “qualified state political subdivision” as a governmental unit of a state, including any city, county, or similar governmental body that meets the following criteria:

- **Has authority under state law.** The political subdivision must have legal authority – either explicit or implicit – to establish and operate the program, and to require employer participation.
- **Has a population at least equal to that of the least populous state.** This population test – which applies at the time of the retirement program’s enactment – is designed to minimize the possibility that private employers would be subject to programs run by political subdivisions that lack the appropriate experience, resources and capacity.



- **Is not within a state that has enacted its own mandatory payroll deduction program.** This requirement protects private employers from being subject to requirements from overlapping or duplicative programs.
- **Implements and administers a retirement plan for the public sector employees in its political subdivision.** Like the population test, this rule is designed to reduce the chance that private employers would be subject to programs run by a political subdivision that may not be able to do so successfully.

City Plans in the Works

In October 2016, New York City [proposed a plan](#) to cover the city's private-sector employees who lack retirement plan access. Philadelphia and Seattle are also exploring possibilities for city-run retirement plans.

Comment. Washington state has adopted a voluntary [marketplace program](#), whereby it connects employers with private-sector retirement plan providers. As DOL's final rule prohibits municipal retirement programs within a state that has enacted a mandatory payroll deduction program, Washington's marketplace approach will not interfere with Seattle's efforts to enact a municipal retirement program.

In Closing

As with its approach to state-run retirement plans, courts could disagree with the DOL's position that a political subdivision can design a retirement savings program for private-sector employees that is not subject to ERISA. Nevertheless, employers should review their workplace savings programs and consider whether to broaden any eligibility provisions that may otherwise subject them to participating in a retirement savings program run by states or municipalities to cover employees ineligible under their own plan.

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