

## Congress Nixes DOL State-Run Savings Plan Rules

President Trump is expected to ink Congress' dismissal of DOL's regulatory safe harbor for state-run retirement savings plans. States, cities and counties are not barred from operating these programs, but risk legal challenges from employers without the benefit of DOL support.

### Background

In August 2016, the DOL finalized parameters for an IRA established and maintained under a state payroll deduction savings program to be exempt from ERISA coverage – and thereby avoid many ERISA and DOL regulatory compliance requirements. Paltry retirement savings by many American workers coupled with lack of congressional action to address this issue spurred the Obama administration to encourage states to pick up the slack. (See our [August 29, 2016 For Your Information](#).)

In December 2016, the DOL expanded the state-based retirement safe harbor rule to political subdivisions under specified conditions. This gave cities and counties — in addition to states — the DOL's blessing to require private employers that do not sponsor a retirement savings plan for their entire employee population to facilitate participation in a government-run retirement program. (See our [January 5, 2017 For Your Information](#)).

#### Oregon moves forward.

On April 18, the Oregon State Retirement Board approved **final rules** for its state-run retirement program for private sector employees. The final rules exempt employers that sponsor a qualified retirement plan (even one that does not cover all employees) from participating in the state program, but employers must certify their exempt status every three years.

### Congress First Pulls Back Rule for Cities and Counties

In April 2017, President Trump signed [legislation](#) disapproving DOL's safe harbor for government-run payroll deduction savings programs set up by political subdivisions. See our [April 17, 2017 Legislate](#).

**Comment.** Congress repealed this regulation under the Congressional Review Act, which gives it authority to repeal a federal regulation within 60 legislative days of its implementation.

## State-Based Retirement Program Safe Harbor Falls

The House and Senate have cleared [legislation to axe](#) DOL's regulation for government-run payroll deduction savings programs set up by states. President Trump is expected to sign the bill soon.

### What's Next?

Eliminating DOL's safe harbors for these plans does not bar states, cities and counties from creating mandates to address retirement savings gaps. But it may increase the likelihood of court challenges from aggrieved employers arguing that state and local mandates present undue burdens that ERISA intended to bar. Courts may be less inclined to allow these programs in light of Congress specifically rejecting the DOL's safe harbors.

Depending on the nature of the programs these jurisdictions roll out, employers operating in more than one state, or with employees residing in more than one state, or residing in one state and working in another, may be subject to multiple local retirement savings laws — which could create burdensome and confusing compliance issues. To illustrate, consider a person that works in State A and lives in State B. If State A's law affects all employees working in State A, and State B's law affects all employees living in State B, an employer may need to comply with both states' laws for an employee working in State A and living in State B. If both state laws required payroll deductions for the same employee, ordering or crediting rules may be necessary — burdening both the employer and the employee.

**Comment.** Congress could help prevent this type of scenario by creating a uniform standard or model for state or local-based arrangements, or for private-sector multiple employer plans, that would expand access to coverage in a streamlined, consistent manner. For employers with savings plans in place, allowing immediate eligibility, if feasible, could insulate them from involvement with future government-run mandates.

### In Closing

States and political subdivisions may continue to move forward with government-based IRA programs, even now that Congress is doing away with the DOL safe harbors. It remains to be seen if courts will find that these programs interfere with ERISA's goal of uniform national regulations for administration of employee benefit plans.

**Authors**

Julia Zuckerman, JD  
Marjorie Martin, FSPA, EA, MAAA

**Produced by the Knowledge Resource Center**

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email [fyi@conduent.com](mailto:fyi@conduent.com).

You are welcome to distribute *FYI*® publications in their entireties. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.