

update

Public Sector Benefits Compliance News

January 12, 2017

Final Rule Allows Large Cities and Other Political Subdivisions to Establish Savings Programs for Private Sector Employees

The Department of Labor (DOL) recently published a final rule that extends the DOL-established state safe harbor (described in an earlier final rule published on August 30, 2016¹), for establishing payroll-deduction savings programs for private sector employees to “qualified political subdivisions” (e.g., large cities and counties).² Compliance with the safe harbor allows programs enacted by states and eligible political subdivisions to be exempt from the Employee Retirement Income Security Act (ERISA). The new final rule is effective January 19, 2017.

Under the new final rule, the safe harbor applies to programs that require private sector employers without a workplace retirement savings mechanism to automatically deduct amounts from employees’ wages for deposit into programs administered by political subdivisions, in addition to states, that establish individual retirement accounts (IRAs). Employees must be allowed to opt out of the program and employer contributions are prohibited.

Definition of Qualified Political Subdivision

The final rule defines a qualified political subdivision as any state governmental unit (city, county or similar units) that meets the safe harbor criteria established for states in the August 30, 2016 final rule, as well as additional criteria in the new final rule. The DOL estimates only 51 political subdivisions are eligible for the safe harbor, including three (Seattle, Philadelphia and New York City) that have expressed interest in it.

Safe Harbor Criteria

Under the final rule, the political subdivision must meet the following criteria:

- **Authority** The authority to implement a program requiring employer participation must be granted to the political subdivision, whether explicitly or implicitly. General-purpose subdivisions with tax, eminent domain and police power generally have such authority while special-purpose subdivisions (utility districts or transit authorities) likely do not.
- **Sufficient Population** The political subdivision’s population must be equal or greater than the least populated state,³ which is currently Wyoming



Regulatory Guidance News Highlights:

- A new DOL final rule allows “qualified political subdivisions,” such as cities and counties, that meet several criteria to offer retirement savings programs for private sector employees.
- Eligible jurisdictions must not be located in a state with a mandatory statewide program or overlap another subdivision’s program.
- The DOL estimates 51 political subdivisions could qualify.

NEW! On April 13, 2017, President Trump signed House Joint Resolution 67, which nullified this DOL rule. See our [hot topic](#).

¹ For a summary of that guidance, see Segal Consulting’s November 7, 2016 *Update*, “[Federal Rule Helps States Move Forward on Retirement Savings Programs for Private Sector Employees](#).”

² The final rule was published in the [December 20, 2016 Federal Register](#).

³ The sufficient-population criterion does not take into account non-states, including the District of Columbia, Puerto Rico and certain other U.S. territories.

(approximately 600,000 residents). Population as determined on the program enactment date prevents loss of safe harbor status in the event of subsequent population fluctuations.

- **Must Not Be Located in a State with a Mandatory Statewide Program or Overlap Another Subdivision Program** The final rule clarifies the exclusion from the safe harbor for political subdivisions located in states that have already enacted mandatory programs (California, Connecticut, Illinois, Maryland and Oregon) or in a state that enacts a mandatory program before the political subdivision does. The final rule also excludes from the safe harbor political subdivisions located in the same geographic area as another subdivision that has already enacted a program. This first-in-time coordination rule preserves a political subdivision's safe harbor status if a state later enacts a program, and prevents geographic overlap with other subdivisions. The exclusion does not apply to subdivisions in states with *voluntary* programs (Massachusetts, New Jersey and Washington).
- **Demonstrated Capacity** The political subdivision must implement and administer (or oversee administration of) a retirement plan (defined benefit plan, individual account plan or both) for its employees. The final rule added this test in order to limit, when combined with the population test, eligible political subdivisions to those with the capacity and resources to establish and oversee complex savings programs for private sector employees.

Compliance with the tests in the last three of the four criteria is determined on the date the subdivision's program is enacted.

Responsibility and Liability for Program Operations

The new final rule maintains the safe harbor requirement that states and qualified political subdivisions are responsible for the programs they implement and administer. The final rule strengthens required security of payroll deductions by clarifying that states and political subdivisions must require and enforce prompt employer remittance of wage withholdings. Deductions are deemed "prompt" under the final rule if remitted when reasonably segregated from employers' general assets but no later than last day of the month following month amount would be payable to employees.

The states and political subdivisions are also responsible for investing employee savings or selecting investment alternatives. However, states and political subdivisions can delegate administrative functions to investment or service providers. Employees must be notified by the state or political subdivision of their rights under the program and how to enforce them.

Employers' roles in a state or qualified political subdivision program under the final rule remain limited to nondiscretionary operational functions, including implementing payroll deductions with prompt transmission to state or political subdivision programs, maintaining accurate records, providing program notice and information to employees and complying with information requests from a state or political subdivision necessary for program operation.

How Segal Can Help

Implementing and administering a retirement savings program for private sector employees in a large city or county is a complex process. For such an important undertaking, expert assistance is critical. Segal Consulting has experience establishing such a program and can assist potential program sponsors by:

- Analyzing and recommending both plan and program features. Plan features may include eligibility rules, use of automatic features (e.g., auto enrollment, auto escalation or default investments) and benefit structure. Program design focuses on operational processes, such as communicating with employers and employees or mechanisms for withholding and remitting payroll contributions.

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- Designing an investment structure that is appropriate for the program's participants and advising on its oversight, monitoring and governance.
- Assisting with the request-for-proposal process to select service providers to perform various administrative and operational functions of the program.
- Evaluating the feasibility of the program from a cost/benefit perspective.

Political subdivisions should rely on their legal counsel's advice on whether the program will comply with applicable federal laws and regulations, including the ERISA exemption safe harbor.

Questions?

For more information about how these new rules may affect your jurisdiction, please contact your Segal consultant or the [Segal office nearest you](#).

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