



State-Based Initiatives: DOL Guidance

December 2, 2015

*Presentation to Connecticut
Retirement Security Board*



Topics Covered

- State IRA Programs: The Proposed Regulation
- State Marketplaces, Preapproved Plans, and Open MEPs: Interpretive Bulletin 2015-02



Proposed Regulation

- Addresses Concerns About Preemption
- Creates ERISA Coverage Safe Harbor
- Impact of Satisfying Safe Harbor
 - Not Subject to ERISA
 - Less Likely to be Preempted



Role of State

- Established by State Under State Law
- State Responsible for Security of Payroll Deductions and Savings
- State Must Create Mechanism for Enforcement of Rights



Role of State

- Either State, Agency, or Instrumentality, Responsible for:
 - Investment or Selection of Investment Options
 - Notifying Employees of Their Rights
 - Overall Administration (But May Contract with Service Providers)



Employer Limitations

- Collecting and Maintaining Records of Employee Contributions
- Providing Information to State
- Providing Notice of Collection of Contributions, and Other Information on the Program From the State, to Employees
- No Employer Contributions



Employee Rights

- Auto-Enrollment and Escalation Permitted
 - Opt Out Required
- Must Provide Adequate Notice
 - Deductions and Rights
- Withdrawals Must be Allowed
 - Consistent with IRA Rules
 - No Additional Costs or Penalties



Comments

- Comment Period Closes January 19
- Comments Requested On:
 - Requiring Connection Between Employers/Employees and the State Establishing the Program
 - What Constitutes “Adequate Notice”
 - Types of Employer Functions That Could be Permitted
- Other Issues



Comments

- Are There Areas The Board May Want to Comment On?
 - Lock-In Provisions? Annuity Restrictions?
 - Levels of Employer Involvement/Role in Program to Facilitate Administration?
 - Automatic Enrollment and Voluntary Enrollment for Non-Covered Groups?
 - Responsibility for “Security” of Payroll Deductions / Employee Savings?
 - Meaning of “Enforcement Mechanism”?



Interpretive Bulletin 2015-02

- What It Addresses
 - ERISA Preemption and State Initiatives
- Types of Initiatives Covered
 - State-Run MEPs
 - State-Run Master and Prototype Plans
 - Marketplaces
- Initiatives Not Covered
 - IRAs – Look to the Proposed Regulation



Interpretive Bulletin 2015-02

- Mandatory Employer Participation Laws Would Be Preempted
- DOL's View of Preemption
 - "Does Not Appear to Undermine ERISA"
 - State Does Not Create Requirements "Relating To ERISA"
 - State As Market Participant and Not As Regulator
 - Relation to "Governmental Plans" Definition



Interpretive Bulletin 2015-02

- States Can Run Open MEPs
 - Nexus is Formed Because of a State's Unique Representational Interest in Health and Welfare of its Citizens
 - Still No Private Sector Open MEPs
- Effective November 18, 2015
 - No Notice and Comment



What's Next?

- Finalization of Proposed Regulation
 - Expected by End of 2016
- Congressional Action?
 - Open MEPs
 - Automatic IRA