DOL Safe Harbor State-Run IRAs for Private-Sector Employees

QPN Highlights
This QPN is for information purposes only; no action is required.

- States and Qualified Political Subdivisions (QPSs) may now offer an individual retirement account (IRA) plan to private-sector employees that do not have access to a workplace retirement plan, if established under state or QPS law.

- To avoid pre-emption of state or QPS law these plans are not subject to the Employee Retirement Income Security Act (ERISA) when certain requirements and conditions are met.

- Employers are required to participate in the plan but the employer’s involvement must be limited and no employer contributions are permitted.

- Participation by employees is voluntary.

Failure to accumulate adequate retirement savings causes great difficulties for these individuals once their working years have ended. It also negatively impacts state and federal social welfare programs as the number of individuals needing these services increases with inadequate retirement savings. In an effort to provide a retirement savings option for all private-sector employees, in the last few years, several states enacted laws that permit the establishment of a state-run plan including California, Connecticut, Illinois, Maryland, Oregon, Massachusetts, and Washington. Then in 2015, at the White House conference on Aging, President Obama directed the DOL to provide states with rules that would allow the states to establish retirement savings plans for private-sector employees.

One of the concerns states and QPSs have regarding the establishment of a state-run retirement savings plan is how to insure the plan is not subject to ERISA, to avoid pre-emption of state law by ERISA. In response to the President’s directive and the ERISA concerns of the states and QPSs, the DOL provided final safe harbor regulations. Under the safe harbor, when certain conditions and requirements are met, employers may make payroll deductions of employees’ IRA contributions and remit them to the state or QPS plan and the plan will not be subject to ERISA.

Effective Date: The final regulations covering states only were effective October 31, 2016. The amended final regulations that also permit QPSs to establish a plan were effective January 19, 2017.

The Department of Labor (DOL), Employee Benefits Security Administration (EBSA) released final regulations in August of 2016 providing a safe harbor for states that would like to offer a savings vehicle to private-sector employees that do not have workplace retirement plans. The safe harbor allows the establishment of a plan that would not be subject to ERISA when certain requirements and conditions are met. In December of 2016 the DOL released amended final regulations to permit certain QPSs to establish the same type of IRA savings plans as the states.

Background – Millions of workers in this country do not have a workplace retirement plan available to them.
The state or QPS program must meet the following requirements:

- Be established under state or QPS law.
- Be implemented and administered by the state or QPS including responsibility for investing the employee contributions or for selecting investment alternatives for employees to choose from.
- The state or QPS is responsible for the security of payroll deductions and the employees’ savings including the prompt remittance by the employer of amounts withheld from employees’ pay along with a means to enforce this requirement. Remittance is deemed to be prompt if the amounts are remitted to the program as of the earliest date on which the contributions can reasonably be segregated from the employer’s general assets, but no later than the last day of the month following the month in which such amounts would otherwise be payable to the employee in cash.
- The state or QPS must adopt measures to ensure employees are notified of their rights and must create a method for enforcement of those rights.
- Employee participation must be voluntary.
- The rights of the employees (includes former employees or beneficiaries) are enforceable only by the employee, an authorized representative of such person or by the state or QPS.

The employer’s involvement must be limited as follows:

- Collecting employee contributions and remitting them.
- Furnishing notice to employees and maintaining records of the employer’s collection and remittance of contributions.
- Providing information to the state or QPS necessary to facilitate the operation of the program.
- Distributing program information from the state or QPS to employees and to publicize the program to employees.
- No employer contributions are permitted and no incentives can be offered to employees to participate.
- The employer is required to participate under state or QPS law.
- The employer has no discretionary authority, control or responsibility under the program.
- The employer receives no direct or indirect consideration or cash other than an amount that does not exceed the employer’s reasonable costs under the program.

The program may also:

- Apply only to employers that do not offer a workplace retirement savings arrangement.
- Permit the state or QPS to use one or more service or investment providers as long as the state or QPS retains responsibility for the operation and administration of the plan.
- Require automatic enrollment of employees (including automatic increases) as long as the employees may elect not to participate or may elect a different deferral percentage and are furnished with advanced notice of their right to make these elections.
- Restrict IRA withdrawals as determined by the state or QPS.

The safe harbor is not the only option: The DOL notes that these regulations provide for a safe harbor state or QPS run IRA savings plan for private-sector employees that is not subject to ERISA. However, the state or QPS may choose not to use the safe harbor and experiment with other approaches to state or QPS run plans not subject to ERISA or may choose to offer a plan that is subject to ERISA.

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