



# State-Based Initiatives: DOL Guidance

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*December 2, 2015*

*Presentation to Connecticut  
Retirement Security Board*



# Topics Covered

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



# Proposed Regulation

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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?

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