



STATE OF CONNECTICUT

RETIREMENT SECURITY BOARD

CO-CHAIRS: STATE COMPTROLLER KEVIN LEMBO & STATE TREASURER DENISE NAPIER

Connecticut Retirement Security Board

Meeting Minutes

Wednesday, January 6, 2016

9:00 AM

55 Elm Street, Hartford, 7th Floor Treasurer's Conference Room

Members Present:

Hon. Kevin Lembo, State Comptroller, Co-Chair

Hon. Denise Nappier, State Treasurer, Co-Chair

Acting Commissioner Dennis Murphy

Ken Floryan

George Kasper

William Kosturko

Sal Luciano

Brendan Maher (via phone)

Jamie Mills

James Russell (via phone)

John Sayour

Members Absent:

Thomas Barnes

Michael Callahan

Special Guests:

Michael Kreps, Groom Law Firm

Joshua Gotbaum, Brookings Institution

Jamie Kalamarides, Prudential Retirement

Bennett Kleinberg, Prudential Retirement

Other Participants:

Genevieve N. Ballinger, Research Analyst, Office of the State Comptroller

A. Call to Order

Comptroller Kevin Lembo called the meeting to order at 9:03 am.



B. Adoption of Meeting Minutes

A motion was made by Jamie Mills to adopt the meeting minutes of December 2, 2015. William Kosturko seconded the motion and the minutes were unanimously adopted.

A motion was made by Treasurer Nappier to adopt the meeting minutes of December 8, 2015. Ken Floryan seconded the motion. Minutes were unanimously adopted. Mr. Kosturko and George Kasper abstained.

A motion was made by Mr. Floryan to adopt the meeting minutes of December 22, 2015. Mr. Kosturko seconded the motion and the minutes were unanimously adopted.

C. Legal Team Presentation

Michael Kreps from Groom Law Group presented to the Board regarding the letter that is to be sent to the U.S. Department of Labor (DOL) commenting on the proposed rule that grants a safe harbor allowing state-sponsored payroll deduction savings programs, including plans with automatic enrollment such as the Connecticut state plan, to not trigger ERISA. Similar comments are being made by other states on the DOL November 18, 2015 proposed rule. The three main points that the letter first addresses is that the proposed DOL rule is very beneficial to the Board because it provides certainty that the Board can move forward with the program, that there is a need for further flexibility in the rule's requirements, and that the timing of the finalization of the ruling should be before April 1.

Specifically, the letter asks that the DOL allow voluntary automatic enrollment in payroll deduction savings programs to fall within the safe harbor. One of the conditions of the proposed rule is that "the employer's participation in the program is required by state law," thus, the safe harbor would not apply to an employer who voluntarily participates in the state payroll deduction savings program with automatic enrollment. There was some discussion about if it was possible to have voluntary auto enrollment. Treasurer Nappier added that this would only affect the auto-enrolled employees and not the voluntarily enrolled employees if DOL does not change the safe harbor. Mr. Kasper recommended lowering the number of employees. Brendan Maher commented that the DOL ruling is only looking at plans that fall within the safe harbor and that the DOL position is not binding in court. If the DOL stated that preemption occurs to the plans that fall outside of the safe harbor it is different. The idea of voluntary auto-enrollment would trigger ERISA. Mr. Kreps used the example of a health savings account (HSA) because like the state plan IRA a HSA has auto enrollment and does not trigger ERISA. Another issue that the Board is bringing to the DOL's attention is withdrawal limitations. The proposed rule would prevent states from requiring any employee or beneficiary covered by a program to retain any portion of contributions or earnings in their IRA and would prevent a state from putting any restrictions on withdrawals beyond those already imposed by federal law applicable to IRAs. The Board is suggesting that the DOL amend the proposed rule to provide that certain reasonable limitations or restrictions be permitted on withdrawals. John Sayour wondered if an employer



that had enrolled its employees in the state plan could then decide to offer a private sector 401K. Ms. Ballinger informed the Board that employers could do this. Treasurer Nappier stated that they are mandated in the state plan until their employer offers a plan. The letter also addresses the delegation of responsibility. The Board would like DOL to clarify the meaning of the condition that the states retain “full responsibility” for the operation and administration of the program. The proposed rule may not allow states to utilize one or more service providers to operate and administer their program upon the delegation of their authority. The Board’s concern is that the requirement that the state retain “full responsibility” may be interpreted as prohibiting states from delegating legal responsibility for program investments and/or administration. The Board also commented that states should be given their own flexibility to design programs, including the flexibility to decide the extent to which employees in the state and employees employed outside of the state will be covered. The Board would like the DOL to clarify that participating employers have the discretion to delay participation in a state plan. Under the proposed rule, employers do not have such discretion of timing when signing employees up. The Board also would like the DOL to confirm that a state’s requirement that employers participate in the state’s information collection and enforcement activities should not be an impermissible act of discretion causing a state plan to be subject to ERISA. The proposed rule provides that a state run program will not be covered by ERISA if the employer’s involvement is limited to providing information to the state or program. Lastly, the Board would like the DOL to clarify the meaning of the requirement that states assume responsibility for the security of payroll deductions and employee savings.

Ms. Ballinger pointed out a change on the top of page 2 in an older letter where it says 800,000. The number has been changed to 600,000.

Commissioner Murphy recommended that Groom add language regarding the Connecticut laws on sharing wage data with a quasi-public agency. The Board then voted on the letter. A motion was made by Mr. Sayour and seconded by Sal Luciano. The Groom letter to DOL was unanimously adopted with the change made by Mr. Floryan.

The Board then voted on joining the joint states’ letter as long as it is consistent with this letter. A motion was made by Mr. Luciano and seconded by Mr. Floryan. The Board unanimously decided to join the joint states’ letter.

D. Presentations

Joshua Gotbaum, Brookings Institution

Joshua Gotbaum presented to the Board regarding the DOL proposed rule as well as comments that the Board could make to the DOL. Mr. Gotbaum suggested to the Board that in drafting legislation that they allow the implementation board to have flexibility and that the Board should be allowed to design the program. Mr. Gotbaum presented on four issues: (1) Would a 401k better serve RSB’s goals; (2) Could CT set up an auto-enrolled 401k instead of an IRA; (3)



What issues should CT raise with DOL; (4) How should enabling legislation be designed to best improve retirement security. After highlighting the key goals of the state plan such as portability, low fees and maximizing savings opportunities, as well as a plan having no state financial liability, no employer ERISA liability and complying with federal law, Mr. Gotbaum then went into the possible plan designs that are consistent with ERISA. These plans include 401k multiple employer plans with a lifetime income (annuity) portion, a hybrid portable plan such as a Multiple Employer ERISA Defined Benefit Plan, or a plan that does not require auto-enrollment such as a clearinghouse/exchange/marketplace. Since DOL is expanding the safe harbor under ERISA, Mr. Gotbaum recommended that a Multiple Employer Plan rather than an IRA would better suit the goals of the Board.

Jamie Kalamarides and Bennett Kleinberg, Prudential Retirement

Jamie Kalamarides and Bennett Kleinberg presented on Multiple Employer Plans (MEP) as a supplement to the IRA. A MEP is “a type of employee benefit plan that can be maintained as a single plan in which two or more unrelated employers participate.” From an employee perspective they offer better retirement outcomes such as employer match, higher contribution limits, protection of principal and accumulated interest availability, and a guaranteed lifetime income with liquidity. From an employer perspective it offers less of a burden and more flexibility by providing limited employer involvement, tax credits to offset employer startup costs, and a choice of plan design. MEPs are within the ERISA regulatory framework and provide consumer protections. A MEP offers scale and simplicity. Prudential is not taking a stance on any plan designs, they are simply providing information at this time. Comptroller Lembo asked the Board if a MEP was a program design that they would like to consider now, since it was not an option when the Board first started their work. Mr. Floryan stated that the Board’s goal is to give employees the ability to save for retirement and although it is more desirable to have a 401K with an employer match, the feasibility study showed that a large number of employers would not participate if they were not mandated. Mr. Floryan thought that offering both an IRA and a MEP would bring the Board back to square one. Treasurer Nappier suggested that we leave this idea of the MEP to the implementing Board.

E. Financial Report

Ms. Ballinger reported that there have been no changes and that Boston College and Mercer have been paid.

F. New Business

The Board voted on authorizing Comptroller Lembo and Treasurer Nappier to have a conversation with Acting Commissioner Murphy and other state commissioners to determine what kind of communications they already have with employers and employees. A motion was made by Mr. Luciano and seconded by Mr. Kasper, and it was adopted unanimously. Ms. Ballinger informed the Board that the legal team will have the first draft of the proposed legislation in February. The Board is hoping to get it to the legislature prior to the April 1 deadline so that it can be acted on this session. Comptroller Lembo asked the Board if they still



wanted to put in permissive language to provide other options for the implementing board. Treasurer Nappier and Mr. Floryan would like to do that because it will give the implementing board flexibility. There was discussion on consumer protections. Treasurer Nappier raised a concern that the plan does not provide consumer protections. Mr. Maher said that ERISA provided consumer protections since it was enacted. He stated that the Board would want to adopt similar protections to ERISA. He is in favor of allowing the implementation board flexibility, but he is concerned that it will undo the work that this Board has already done. The implementing board will not have the knowledge of what this Board has learned. MEP is only useful if it is a compliment to a mandated plan outside of ERISA. Treasurer Nappier would support giving limited discretion. Mr. Kosturko does not think MEP should be added now. He thinks that it would increase the hurdle that they need to overcome to start this plan.

Comptroller Lembo also brought up other areas such as annuities and captive insurance. There is so much to discuss and the Board is running out of time. He thinks that this could be left to the implementation board. James Russell thinks that captive insurance should be discussed. Mr. Floryan thinks that captive insurance does not need to be decided upon now, but can be included as a strong suggestion in the memo to the legislature. The Board has created a viable program. Comptroller Lembo and Ms. Ballinger also agreed that it was not something that should be discussed now and that it would be included in the memo with the legislation to the legislature. Mr. Kasper believed that it goes beyond the Board's authority to design the plan. Mr. Russell agreed.

G. Public Comment

There was no public comment.

H. Adjournment

The meeting adjourned at 11:17 a.m.