THE ASPEN INSTITUTE
FINANCIAL SECURITY PROGRAM

September 29, 2016

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees

RE: Comments on Department of Labor Proposed Rule Regarding Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees (RIN 1210-AB76)

To Whom It May Concern:

The Aspen Institute's Financial Security Program (FSP) appreciates this opportunity to provide comments on the U.S. Department of Labor's (DOL) Proposed Rule Regarding Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees (RIN 1210-AB76).

Aspen FSP is dedicated to solving the most critical financial challenges facing America's households, and to shaping policies and financial products that enable all Americans to save, invest, and own. As such, Aspen FSP supports DOL's efforts to expand retirement plan access to low- and moderate-income families who do not otherwise have access to a plan at work, and we commend the agency for finalizing its proposed regulation on state-established savings arrangements last month (RIN 1210-AB71).[1] By providing legal guidance to states regarding the application of the Employee Retirement Income Security Act of 1974 (ERISA) to their state programs, DOL has helped reduce confusion and uncertainty in state capitals across the country and has paved the way for a meaningful expansion of retirement coverage.

Aspen FSP writes today in support of DOL's related proposal to expand the recently created safe harbor to certain state political subdivisions. As Aspen FSP wrote in its comment letter on the state rule, we believe that cities and counties with the adequate resources should have the option of establishing their own savings arrangements outside of ERISA.[2]

Suite 700
One Dupont Circle, NW
Washington, DC 20036-1133
ph 202.736.2910
fx 202.862.8526
www.aspenfsp.org

Americans who happen to live in a state that has not made an automatic-IRA program available to all its private sector workers should not be doomed to miss out on automatic enrollment in a workplace savings plan, which is by far the most effective way to build a nest egg for retirement. Many cities and counties – including the three that have already expressed interest, New York, Seattle, and Philadelphia – are capable of stepping into this void, and they should not be prohibited from offering a government-run plan to their citizens.

Determining which subdivisions are up to the administrative challenge of establishing a new retirement plan – and how to avoid overlap between jurisdictions – presents a number of complicated questions, but Aspen FSP is confident that DOL's current proposal answers them sufficiently.

As DOL explains in its proposed rule, ensuring that the jurisdiction has the "sufficient experience, capacity, and resources to design and operate" the plan is of the utmost importance. Aspen FSP agrees and recognizes that there are a number of ways to achieve this objective. DOL's proposal – which requires the jurisdiction to have a population at least as large as the least populous state – is, we believe, a fair and effective approach. In Aspen FSP's original comment letter, we floated the idea of a petition system in which DOL would accept or reject each subdivision's application for approval. Though we continue to believe that a petition system may well be the best approach, we recognize some of the shortcomings of that solution (e.g., provides less certainty to state subdivision actors and is more resource-intensive for the agency) and are not wed to it. Aspen FSP also believes that state and local officials – who are intimately aware of their jurisdictions' unique needs and characteristics – are capable of the necessary coordination and negotiation to ensure citizens and employers in their state do not face conflicting or counter-productive obligations.

Furthermore, Aspen FSP believes that state political subdivisions should also be able to establish ERISA-covered plans, like those described in DOL's Interpretive Bulletin Relating to State Savings Programs That Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974.[3] This seems to be the implication of footnote 5 of the proposed rule, but further clarification may be necessary.

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[1] *See* Mitchell, David, "Secure Choice States Get Final Go-Ahead from Obama Administration," *Aspen Institute Financial Security Program*, 7 September 2016, https://www.aspeninstitute.org/blog-posts/secure-choice-states-get-final-go-ahead-obama-administration/.

[2] Rademacher, Ida, "Comments on Department of Labor Proposed Rule Regarding Savings Arrangements Established by States for Non-Governmental Employees (RIN 1210-AB71)" *Aspen Institute Financial Security Program*, 19 January 2016.

[3] RIN 1210-AB74; codified at 29 CFR 2509.2015-02.

Thank you for your consideration of these comments. Please contact David Mitchell at David.Mitchell@aspeninstitute.org or 202-736-3561 should you have any questions.

Sincerely,

Ida Rademacher
Executive Director
The Aspen Institute, Financial Security Program