



December 15, 2014

J. Mark Iwry  
Senior Advisor to the Secretary and Deputy Assistant Secretary  
for Retirement and Health Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW

Washington, DC 20220

Dear Mr. Iwry:

This responds to your request for the view of the Department of Labor (Department) on whether retirement savings accounts established under the U.S. Department of the Treasury's retirement security program (also known as *myRA*) would be covered under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The *myRA* program will be administered by the Treasury Department and its financial agents. You asked the Department whether an employer would be establishing or maintaining an "employee pension benefit plan" within the meaning of section 3(2) of ERISA by facilitating and encouraging participation by employees through payroll withholding contributions in the *myRA* program.

The U.S. Department of the Treasury is offering *myRA* in response to a Presidential directive to the Secretary of the Treasury to develop a retirement savings security focused on new and small-dollar savers. The *myRA* program will be targeted at lower and medium income individuals who generally are not currently saving and are not eligible to participate in an employer-sponsored retirement plan. A *myRA* account will invest only in a new Treasury retirement savings bond, which will be available only to *myRAs*. The account will be a Roth IRA and, accordingly, will be subject to the rules that apply to Roth IRAs, including contribution limits, income limits, and taxability rules. An employer that makes *myRAs* available by payroll deduction is not responsible for compliance with any of these rules or limits. There will be no fees to open and maintain a *myRA*, and, because a *myRA* account can invest only in the *myRA* Treasury retirement savings bond, the account will never lose value (except as a result of withdrawals). In addition, the assets in the account can be rolled over at any time to a private-sector Roth IRA and will be when the retirement savings bond matures after 30 years or once its total value reaches \$15,000.

Initially, employees may make contributions only via payroll deduction. We understand that Treasury intends to expand the program in the future to allow individual savers, including self-employed individuals, to make contributions by other means, such as by direct transfers from the saver. We also understand that Treasury does not at this stage intend for employers to implement automatic contribution arrangements (also known as automatic enrollment) whereby a contribution equal to a default percentage of the employee's pay is made to a *myRA* established for the employee unless the employee affirmatively elects otherwise. Rather, except for the rollover when the retirement savings bond matures after 30 years or once its total value reaches \$15,000, the decision to open or close an account, how much to contribute, and whether or how to take a withdrawal would be made by employees by affirmative election.

Under the *myRA* program, employers would provide employees with information and enrollment and election forms made available by the Treasury Department or Treasury's financial agent. Some employers that do not offer a retirement plan or that have employees who are ineligible to participate in an employer-sponsored retirement plan may want to more actively encourage their employees to set up *myRA* accounts. For example, some may wish to make computers and technical support relating to the program available at the workplace. Some employers may also

want to hold employee meetings to explain the *myRA* program and encourage eligible employees to participate. Others may want to answer employees' inquiries about the *myRA* program, or refer them to Treasury's financial agent.

Thus, until the program is expanded, in order for an employee to make contributions to a *myRA* account, the employer must agree to forward the employee's payroll deduction contributions. Employers would also be expected to cooperate in processes or procedures that Treasury or its financial agent establishes to ensure that employee withholdings are being promptly and correctly remitted. Employers would not make employer contributions to *myRAs*<sup>1</sup> and would have no investment or other funding obligations, or have any custody or control over account assets.

With few exceptions, Title I of ERISA applies to any employee benefit plan established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce. ERISA § 4. ERISA § 3(2) broadly defines an "employee pension benefit plan" and a "pension plan" in relevant part to mean "any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program (i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond . . . ." Although the *myRA* program is designed to provide retirement income to individuals, including employees, we do not believe Congress intended in enacting ERISA that a federal government retirement savings program created and operated by the U.S. Department of the Treasury would be subject to the extensive reporting, disclosure, fiduciary duty, or other requirements of ERISA, which were established to ensure against the possibility that employees' expectation of a promised benefit would be defeated through poor management by the plan sponsor and other plan fiduciaries. *See generally Massachusetts v. Morash*, 490 U.S. 107 (1989)(courts should look to "the provisions of the whole law, and to its object and policy" in deciding what type of benefit programs are covered by ERISA).<sup>2</sup>

Thus, given the character of the program, including its voluntary nature, its establishment, sponsorship, and administration by the federal government, and the absence of any employer funding or role in its administration or design, the Department is of the view that an employer would not be establishing or maintaining an "employee pension benefit plan" within the meaning of section 3(2) of ERISA based solely on the facts that employees participate through payroll withholding contributions and that the employer distributes information, facilitates employee enrollment, and otherwise encourages employees to make deposits to *myRA* accounts owned and controlled by employees.

Sincerely,

John J. Canary  
Director of Regulations and Interpretations

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<sup>1</sup> The Department would treat an employer as making employer contributions to a *myRA* if the employer reimbursed employees for amounts they contributed to a *myRA*.

<sup>2</sup> An endorsement of an IRA product or provider by an employer ordinarily is a significant consideration in determining whether the employer has established or maintained a pension plan under ERISA, *see* 29 CFR 2510.3-2(d). Allowing employers to recommend a specific IRA or provider, but then claim no responsibility to prudently select the IRA or monitor the provider would undercut the protections offered by ERISA. The above concerns do not arise where the employer, without representing that the *myRA* is an employee benefit plan sponsored by the employer, is encouraging employees to take advantage of services or benefits offered by the federal government.