STATEMENT OF LEW MINSKY
BEFORE THE ERISA ADVISORY COUNCIL
ON FACILITATING LIFETIME PLAN PARTICIPATION
JUNE 17, 2014

Members of the Council: Thank you for this opportunity to speak facilitating lifetime plan participation. My name is Lew Minsky and I am the Executive Director of the Defined Contribution Institutional Investment Association (DCIIA). My comments today are informed by my past experiences as an ERISA attorney and as a plan sponsor, but are primarily based on the insights I have gained from the unique opportunity that I have had over the past four and a half years to be at the helm of DCIIA- a nonprofit association dedicated to enhancing the retirement security of American workers. Toward this end, DCIIA's founding mission was to foster a dialogue among people in the defined contribution community who are passionate about improving defined contribution plan outcomes. DCIIA's unique community includes investment managers, consultants, law firms, record keepers, insurance companies, plan sponsors and many others; all of whom are working together on developing thought leadership focused on the best interests of plan participants.

In preparing my testimony, I considered walking you through a series of data points and sharing insights from my past lives as ERISA counsel and as a plan sponsor. Then I looked at the agenda for today's hearing and saw that you will be hearing directly from of the very sources of data I would likely cite, and that you would be hearing from my ERISA counsel and two plan sponsors who are far wiser than myself. So, I shifted focus and decided to share some of the perspectives that I have gained from being able to work with a diverse group of thoughtful plan sponsors and industry leaders over the past several years. I also decided to avoid going into the topic of the communication and delivery of lifetime income solutions during my prepared remarks, but I note for the record that facilitating lifetime participation in plans cannot be accomplished without significant progress being made on both the communication and delivery of lifetime income solutions.

Before sharing thoughts on opportunities for improvement, I want to highlight how far I believe the defined contribution community has come in recent years. In my days as a plan sponsor, I would often speak at industry conferences about the need for an expanded focus on outcomes. Today, we have more than 1200 individuals from more than 150 firms working collaboratively on this very mission though DCIIA. I think it is notable that this broad and diverse cross-section of industry leaders have been working together and that this work has been underpinned by five core beliefs:

- The primary role of defined contribution retirement plans is to create retirement income adequacy: Helping plan participants build sufficient savings to achieve their goals while working (accumulation) to support their income needs in retirement (distribution).
- Well-designed default programs can improve retirement outcomes: Automatic enrollment and automatic contribution escalation (of participant contribution

levels), when combined with default investment options that take advantage of institutional asset management techniques, help increase savings levels and promote better retirement outcomes.

- The regulatory framework and industry infrastructure must offer full support for all types of institutional investment approaches and products, giving defined contribution plans access to the complete toolkit of investment, retirement income and advice solutions.
- Plan sponsors and their consultants should have the ability to select the best combination of partners to meet plan needs, including investment and retirement solutions, record keeper, custodian, managed account, advice and other service providers.
- Full transparency on pricing and revenue sharing is critical for plan sponsors to evaluate the optimal combination of solutions to deliver improved retirement outcomes for their participants.

As these core beliefs should make clear, DCIIA is a strong supporter of the Council's interest facilitating lifetime participation in plans, and we believe that there are significant opportunities for the Department to help in facilitating this laudable goal. DCIIA has focused much of its early work on ways to improve retirement outcomes through increased savings rates; however, we see a real gap in both the research and the discourse that evaluates measures to prevent erosion of savings through "leakage" from the retirement savings system and opportunities to faciltate the consolidation of household savings in defined contribution plans, which are increasingly providing access to institutional investment vehicles and services not available to individuals outside of their plans.

Loans, Hardships and Leakage

I want to start by acknowledging that your Issue Statement identifies an important discussion around the need for greater participant education surrounding plan loans and hardship distribution options. That said, based on the work we have done in DCIIA, and almost every study I have reviewed on the topic, the primary focus in combating pre-retirement leakage from the retirement savings system should be on preventing (or at least limiting) pre-retirement distributions. According to a study done by Aon Hewitt, 43% of workers who terminated employment in 2013 took a (cash) distribution. Moreover, research that DCIIA conducted a few years ago, with data and analysis provided by the Employee Benefit Retirement Institute (EBRI), indicates that these pre-retirement distributions (often referred to as "cash-outs") pose by far the most significant risk to successful retirement outcomes in defined contribution plans. Indeed, this analysis shows that when it comes to 401(k) leakage, loan-taking only has a major impact on retirement savings outcome where those loans turn into withdrawals (e.g., upon an employee's termination). Details of those and other findings around plan leakage (as well as a number of practical suggestions for policymakers, plan sponsors and service providers) can be found in the Plugging the Drain research paper that is included as an appendix to this testimony.

In light of the impact of cash-outs, DCIIA is focused on building consensus among plan sponsors, policy makers and other key stakeholders (including our members) about ways to reduce savings from permanently flowing out of the system through these pre-retirement distributions. One important way DCIIA is trying to do this is by highlighting innovative plan sponsor practices, as we did in the inaugural DCIIA Plan Sponsor Newsletter which focused on the New York City Deferred Compensation Plan's implementation of deemed IRAs to combat leakage. A copy of this newsletter is also included as an appendix to my testimony. I'm happy to report that there are a number of other promising developments we are seeing in the plan sponsor community. Three years ago, DCIIA partnered with Pensions & Investments to create an annual award recognizing innovators in the plan sponsor community. In the three years that have followed, we have received nearly two hundred nominations identifying plan sponsors that are willing to be out in front of the herd in designing solutions that are focused on improving retirement outcomes for their plan participants. A number of these innovations are directly applicable to the discussion we are having today. One clear emerging trend we have seen in the nominations is an increased focus on communicating the potential benefits to participants of leaving their assets in the plan after termination of employment (and even into, and through, retirement). Following the same logic, we have also seen a few nominations for plan sponsors that have taken creative approaches to faciltating the ability of new (and existing employees) to consolidate former plan balances and IRAs in their current plan.

Rollovers to Plans and Account Consolidation

I want to focus a little on the consildation of former balances into a participant's current plan as this is an area that presents a real opportunity for the industry and policymakers to help plan sponsors that want to be able to help their participants but are not doing so in the numbers we would like largely because of structural and regulatory impediments. DCIIA feels strongly that streamlining this process and providing regulatory clarity will lead to greater institutionalization of retirement savings. Moreover, leakage rates could be improved significantly if the rollover process is simplified and perhaps even automated.

To start, it is simply too difficult to roll an account from one plan to another. As you probably know, plan-to-plan rollovers historically have required the participant to acquire a copy of the Letter of Determination from their former employer and provides it to the new employer. A live check is then cut from the former plan to the new plan, and that must be matched up with the qualification documentation and a (often confusing) rollover form. I have to admit that I've tried to do this on several occasions in order to consolidate my four different qualified plan accounts, and I have always given up at some point in the process. DCIIA was thrilled to see Treasury take an important step in easying the documentation requirement in Revenue Ruling 2014-9, but we can do more to streamline the process. In this electonic age, there is no reason why this process can not be automated. DCIIA is committed to working with others in the industry to take as much of the drag out of this process as possible.

The fear that a plan will accept non-qualified rollover contributions and thereby risk disqualifying the entire plan is an obvious impediment to advances in this area. Another important, and perhaps less appreciated issue that must be addressed for plan sponsors to feel comfortable facilitating rollovers into their plans is the fear of fiduciary liability.

The Department could take a major step forward in this area by clarifying for plan sponsors that communicating the benefits of the institutional pricing and professional investment management (and often professional advice solutions) in their plans, along with information and services aimed at facilitating the ability of employees to rollover balances from prior plans would all be viewed as non-fiduciary "education" rather than fiduciary "advice." DCIIA held a series of plan sponsor roundtable discussions that touched on this and other topics, and the plan sponsors we heard from almost universally want to do more to help their employees but are worried that, in doing so, they will increase their fiduciary liability. We should be sending exactly the opposite signal to them- plan sponsors that "do the right thing" and provide helpful information to their employees that facilitates, or even encourages, lifetime participation in the employer's plan should not fear that they will be exposed to fiduciary liability from doing so.

While DCIIA applauds the Department's interest in enhancing regulatory protections aimed at preventing bad actors from taking advantage of plan participants, we like to suggest that it is equally important to empower good actors (like the thoughtful plan sponsors you are hearing from today) to be able to take steps to help their plan participants.

Conclusion

DCIIA appreciates the opportunity to share our perspectives on facilitating lifetime plan participation with the Council. We look forward to continuing to work together with you and with the Department to improve the retirement security of American workers.