STATEMENT OF LEW MINSKY
BEFORE THE ERISA ADVISORY COUNCIL WORKING GROUP ON MODEL NOTICES AND PLAN SPONSOR EDUCATION ON LIFETIME PLAN PARTICIPATION
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Members of the Council: Thank you for this opportunity to speak to you about model notices and plan sponsor education on 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 five 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.

My testimony builds on the comments I shared with the Council at last year's hearing on facilitating lifetime plan participation. As with last year's testimony, I will not walk you through a series of data points, or share insights from my past lives as an ERISA counsel and a plan sponsor, as between the first round of hearings and today's hearing, I see that you will be hearing directly from many of the researchers and sources of data I would likely cite, and you will be hearing from both ERISA counsel and plan sponsors who are far more current in their knowledge than myself.

With that in mind, I will focus on sharing 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, and will identify some ways I think DCIIA can be particularly helpful to the Council in determining what to recommend to the Department regarding model notices and plan sponsors education.

To begin with, it is worth noting that DCIIA shares some of the concerns expressed by witnesses that testified in May regarding the danger inherent in issuing model notices- specifically, that the such model communications often lead to an over-reliance on the language contained in the model as a perceived "safe harbor" with the unfortunate accompanying view that other, potentially more effective, means of communication are therefore "unsafe" from a fiduciary perspective. We similarly agree with the comments made by a number of witnesses, including most notably CIEBA's plan sponsor witness, that plan sponsors will benefit most from a regime that is not prescriptive in nature but rather focuses on empowering plan sponsors through a flexible and permissive structure.

As the Council considers potential paths forward, DCIIA would love to help in any way that we can. To that end, DCIIA would be happy to work with the Council to gather

perspectives and feedback from the different segments of our community on various potential approaches. This may be particularly helpful as we are in a somewhat unique position to be able to quickly and efficiently survey a broad cross section of both the provider and plan sponsors communities, all of whom participate in DCIIA.

DCIIA is also very interested in facilitating research on what forms of communication (and other programs) are most effective in getting plan participants to take actions that lead to better outcomes, including actions connected with lifetime plan participation. We would welcome the opportunity to partner with the Council, the Department, and perhaps one or more of the academics that have testified before this working group in conducting this research.

Before shifting to sharing some thoughts on specific opportunities to improve the retirement savings system to facilitate lifetime plan participation, 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 about 2000 individuals from more than 200 organizations 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. We also see tremendous opportunities to facilitate 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

The Council's Issue Statement identifies important goals in drafting model notices and related educational outreach materials for plan sponsors to use. This is a helpful continuation of the discussion that the Council got started last year around lifetime plan participation generally, and the need for greater participant education surrounding plan loans and hardship distribution options specifically. This continued focus is critically important as, 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 available through the Publications tab on the DCIIA website.

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. I'm happy to report that there are a number of promising developments we are seeing in the plan sponsor community. Four years ago, DCIIA partnered with Pensions & Investments to create an annual award recognizing innovators in the plan sponsor community. In the four years that have followed, we have received nearly three 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. In fact, you'll be hearing from one of last year's Innovation Award winners on a panel later today. One clear emerging trend that 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 consolidation 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. Based on conversations with a number of major plan sponsors, it is clear that, while some are moving forward in this area, many more are hesitant to do so because of structural and regulatory impediments.

While model notices and educational materials can be very helpful in getting plan sponsors to move forward in this area, DCIIA feels strongly that additional steps will ultimately be necessary to streamline this process and provide the regulatory clarity that plan sponsors desire. We are very committed to working with the Council and the Department on these additional steps as this will ultimately lead to greater institutionalization of retirement savings. Moreover, we are confident that leakage rates could be improved significantly if the rollover process is simplified and perhaps even automated.

As I discussed with you last year, 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 provide 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 when Treasury took an important first 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. One simple step we are currently working on is the development of a standard agreed upon statement regarding the qualified status of a distributing plan that all recordkeepers could include on participant statements (and distribution paperwork) which could then be relied upon by a receivng plan's recodkeeper (and thereby significantly streamline the process).

While 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. As the Council considers helpful educational materials the Department could provide to plans sponsors, DCIIA suggests a focus on 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 has held a number of plan sponsor roundtable discussions that have touched on this topic, and the plan sponsors we have 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 for 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 model notices and plan sponsor education on 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.