ILLINOIS SECURE CHOICE SAVINGS BOARD

January 6, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N–5655
U.S. Department of Labor
200 Constitution Ave. NW.
Washington, DC 20210

RE: Proposed Rule for State Savings Arrangements Safe Harbor, RIN 1210-AB71

To whom it may concern,

We are writing as members of the Illinois Secure Choice Savings Board concerning the Department of Labor's proposed rule for savings arrangements established by states for non-governmental employees.

We strongly support the proposed rule and commend the Department for taking action to help workers across the country gain access to employer-based retirement savings programs. The proposed rule will enable Illinois to move forward with implementation of the Illinois Secure Choice Savings Program (Secure Choice), an effort to provide access to a retirement savings account at work for over one million private sector workers without unduly burdening employers with administrative duties or financial liability under the Employee Retirement Income Security Act (ERISA). Through the creation of a safe harbor, the Department makes clear that certain state-run programs with automatic enrollment, default options, and limited employer involvement will not trigger ERISA. The Board is grateful for the Department's work and urges the Department to finalize the rule as quickly as possible.

Background

Retirement insecurity is increasing across the country with far too many workers nationally, and in Illinois, not saving for retirement. Without adequate savings, workers risk retiring into poverty or being over-reliant on Social Security. According to the Social Security Administration, 36 percent of beneficiaries rely on Social Security for at least 90 percent of their monthly income. This lack of adequate retirement savings is also likely to put a significant burden on state and federal safety net programs.

An inadequate system of retirement options—especially for the most marginalized members of society—is clearly at the root of the problem. As described in the proposed rule, 68 million Americans lack access to an employer-sponsored plan. Here in Illinois, approximately half of all private sector workers lack access to workplace-based retirement savings options, and numerous academic studies—including work conducted at the Schwartz Center for Economic Policy Analysis at the New School and the National Institute on Retirement Security—have revealed a dramatic savings disparity between workers with access to an employer-offered savings plan and those without.

The Illinois Secure Choice Savings Program

In order to address this problem, the Illinois General Assembly passed the Illinois Secure Choice Savings Program Act in December of 2014. The legislation was signed into law in January of 2015 and went into effect this past summer. The law requires Illinois businesses with at least 25 employees, that have been in business for two or more years, and who do not currently offer a qualified savings plan to either offer a private market savings plan or automatically enroll their employees into Secure Choice. Secure Choice participants will be enrolled into a default target date Roth IRA with a default three percent payroll deduction, but could choose to change their contribution level or fund option at any time, or could opt-out of the program altogether. Accounts are owned by individual participants and are portable from job to job.

Individual accounts will be pooled together and managed by a private investment company selected through a competitive bidding process. Secure Choice is run by an independent, seven-person Board. Implementation is underway, and we estimate the Program will be open for enrollment in the summer of 2017. An estimated 1.2 million workers will gain access to employer-based retirement savings plans because of the Illinois Secure Choice Program.

Specific language in the law prevented the program from moving forward if it was deemed to be an employee benefit plan and State or employer liability was established under ERISA. While the law was intentionally designed to limit the role of employers, certain features of the program, such as automatic enrollment and default options, left some uncertainty about whether Secure Choice would trigger ERISA. The proposed rule from the Department makes clear that Secure Choice is not considered an employee benefit plan and falls under the safe harbor from ERISA.

Features of the Proposed Rule

In preparation for the implementation of Illinois Secure Choice, four key federal priorities were identified as necessary for success: allowing for automatic enrollment, allowing for a default option, allowing for required participation by certain businesses, and allowing for reasonable employer involvement.

The Board is therefore very pleased with the Department's proposed rule that creates a safe harbor for state-based retirement savings plans such as Illinois Secure Choice. We agree with the Department's reading that "the 1975 safe harbor was not written with such state laws in mind," and that "where states require employers to offer savings arrangements, undue employer influence or pressure to enroll is far less of a concern." We applaud the Department's initiative to allow for a new safe harbor that would provide states with the ability to enact laws that would require workplace-based retirement savings options and allow for state managed plans that would automatically enroll employees that lack access.

We are also pleased that the proposed rule acknowledges the difficulties that employers and employees could face if such a program was not administered with the correct tools. We believe that the Department is right to include provisions within the rule that allow safe harbor programs to create a default investment option, in order to ensure that the funds of automatically enrolled workers are safely invested. Furthermore, as has been discussed in Illinois at length, such state based requirements for workplace-based retirement savings options should not be an undue burden to employers. This is why we applaud the Department for allowing employers to remain simple conduits for the payroll deduction portion of a safe harbor covered plan, instead of a more involved investment partner with direct fiduciary responsibility.

We believe that the proposed rule will allow states to take major steps toward improving retirement savings for their residents, especially for the most vulnerable. For Illinois, this proposed rule clears the way for the Board to continue implementation of the Illinois Secure Choice Savings Program, benefiting over a million private sector workers. We appreciate the Department's tireless work on drafting these rules and their transparent process in eliciting feedback and information.

Please feel free to reach out to our Board or the Office of the Illinois State Treasurer for any assistance that we can provide during this process.

Sincerely,

Michael Frerichs, Chairman
Illinois State Treasurer

Leslie Munger, Board Member
Illinois State Comptroller

Kelly Hutchinson, Board Member (Designee)
Illinois Governor's Office of Management and Budget

Miriam Martinez, Board Member

David Marzahl, Board Member

David Rappaport, Board Member

John Rauschenberger, Board Member