January 19, 2016

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Re: RIN 1210–AB71: State Savings Arrangements Safe Harbor

Ladies and Gentlemen:

State Street Global Advisors ("SSGA"), a division of State Street Bank and Trust Company, appreciates the opportunity to provide comments on the Department of Labor's (the "Department") proposed regulation ("Proposed Regulation") regarding the implementation of a state savings arrangements safe harbor under the Employee Retirement Income Security Act of 1974 ("ERISA").

In this letter we provide:

- Comments on the Proposed Regulation and its potential effects on the retirement savings coverage gap that currently exists in the United States.
- Comments regarding Interpretive Bulletin 2015-02 ("IB") released simultaneously with the Proposed Regulation. We understand that the IB is not subject to notice and comment. However, we have thoughts on the IB we would like to share that may help frame the broader discussion.

SSGA is a global leader in asset management, managing more than $2.2[1] trillion in assets from corporations, endowments and foundations, third-party asset gatherers, pension funds, and sovereign wealth funds as of September 30, 2015. SSGA has been providing asset management services for over 30 years and began offering services to 401(k) clients in 1983. As of September 30, 2015, SSGA assets under management for global defined contribution ("DC") and deferred compensation plans totaled $335.73 billion, of which $245.40 billion was DC assets sourced in the United States.

BACKGROUND

Today, most new businesses created are small businesses (fewer than 100 employees). Although the federal government has enacted tax incentives and plan designs intended to encourage small employers to offer retirement plans, attempts to broaden coverage have not yet had their intended effect for numerous reasons, including burden, complexity and the capacity of a small business to prioritize certain benefits. Consider the following differences among retirement plan benefits offered at small companies versus larger companies.

[1] This amount includes the assets of the SPDR Gold Trust (approx. $24.5 billion as of September 30, 2015), for which State Street Global Markets, LLC, an affiliate of State Street Global Advisors, serves as the marketing agent.

LIMITED ACCESS: Only 47% of small businesses offer some type of plan for their employees to save for retirement, while 89% of large companies offer retirement plans.[2]

LOWER SAVINGS RATES. In the smallest plans, the average savings rate is 5.6%, compared to 7.3% in the largest plans.[3]

HIGHER COSTS. The median 'all-in' fee for the smallest plans is 1.27%, compared to 0.37% in the largest plans.[4]

We call this gap in retirement plan access and quality the "Great Divide". While many larger employers have made great progress toward increasing participation and savings sufficiency in their retirement plans, most smaller companies have fallen behind. We applaud the Department for addressing the lack of retirement plan access for half of American workers and appreciate the opportunity to provide the following input.

GENERAL COMMENTS ON THE PROPOSED REGULATION AND INTERPRETIVE BULLETIN:

The states and the Department are addressing one of the most intractable problems facing our country today: the lack of retirement plan coverage. We believe, however, that policymakers at the federal level need to address the access issue based on best practices and developing a more holistic national solution, rather than a state-based piecemeal approach, to solving the access problem.

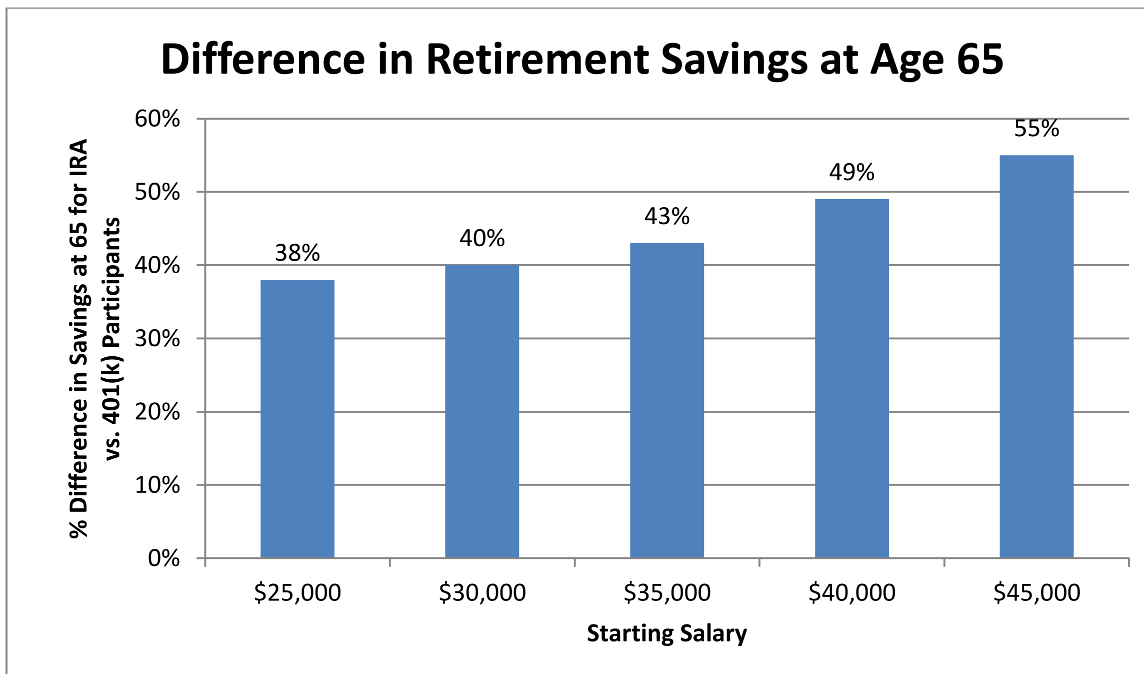
Specifically, our view is that the auto-IRA approach that many of the states are adopting will not achieve the ultimate goal of these programs: to deliver retirement security to American workers. We believe the current approach does not utilize best practices, creates inconsistencies and amplifies complexity.

1. **Misalignment with ERISA and Best Practices.** SSGA believes that ERISA provides important and valuable guidelines for plan sponsors, as well as important protections for plan participants. We believe these valuable protections support a fiduciary mindset and can lead to high levels of plan quality. Furthermore, the practices set forth by the PPA around automation and well-diversified funds, which are practices used by large employers to positively influence employee retirement outcomes, appear to be discordant with the recommendations.
2. **Increased Complexity and Inconsistencies Across States.** In our view, the guidance contained in the Proposed Regulation and the IB will result in a complex and disparate set of retirement savings arrangements for employers and employees. We believe that the Department's guidance, rather than creating the most operationally efficient and effective plan structure, will result in potentially 50 different state programs that lack a uniform structure and experience for employers and employees. Research in behavioral economics clearly shows how complexity hampers decision making. We believe this kind of complexity will not support the end goal of delivering a solution that works for employers and employees. This lack of consistency will be problematic for individuals who move from state to state, as well as for employers with operations that extend across state lines.
3. **Insufficient Savings in an IRA Structure.** As detailed in our comments below, we do not believe that an IRA structure is the ideal singular vehicle to achieve retirement savings. This IRA structure may falsely lead individuals to believe that they have saved sufficiently when in fact

[2] "Employee Benefits in the United States—March 2014," Bureau of Labor Statistics news release of 7/25/14, pg. 1
[3] Ibid.
[4] Deloitte, "Inside the Structure of Defined Contribution/401(k) Plan Fees, 2013

they will come far short of the amount needed in such a structure. We advocate for solutions that mirror the experiences of employees who work for large employers and follow plan design guidance from the PPA and Qualified Default Investment Alternatives ("QDIAs").

To illustrate how the recommended IRA structure will hamper savings sufficiency, we performed a Monte Carlo analysis to explore the difference in retirement savings for a participant invested in a 401(k) plan vs. an IRA. Expected returns, starting salaries, wage growth rate, starting age, and retirement age were constant across the 401(k) and IRA scenarios. Under the 401(k) plan scenario, we assumed a constant 11% savings rate (inclusive of a 3% employer match) and an $18,000 annual cap. Under the IRA, we assumed a constant 8% savings rate (no employer contributions) and a $5,500 annual cap on contributions. The chart below shows the percentage difference in the median retirement savings at age 65 for participants in a 401(k) plan vs. an IRA. Across a range of different starting salaries, the lack of employer contributions (which results in lower savings rates) and lower cap on annual contributions materially reduces retirement savings within an IRA construct. We are not recommending equalizing the IRA vs. 401(k) plan experience but rather following the practices of the traditional large employer 401(k) and bringing those designs and practices to the small employer market.



Analysis assumes starting age of 21 years old, retirement age of 65, with 2.5% annual wage growth rate. Investors assumed to be invested in Target Date Funds and risk and return expectations for those Funds provided by SSGA's Investment Solutions Group as of December 31, 2014. For 401(k) participant, analysis assumes constant 11% savings rate and annual contribution cap of $18,000. For IRA participant, analysis assumes constant 8% savings rate and annual contribution cap of $5,500.

A National Uniform Solution Should Be Enacted.

We strongly advocate for a national solution that addresses the Great Divide and delivers simplicity, consistency and access to a secure retirement for American workers. Such a program should build on the elements that have been successful in the private sector today among large employers: auto enrollment, auto escalation, and the use of institutionally priced default funds (such as target date funds), and should also include decumulation vehicles such as guaranteed lifetime income products so that individuals can have a higher and more stable income throughout their retirement. This structure could be achievable for small businesses through a national solution or a private-market program like open MEPS, as detailed below.

SPECIFIC COMMENTS ON THE PROPOSED REGULATION:

Although we do not believe that an IRA structure will meaningfully achieve the goal of retirement income adequacy, we do appreciate that the Department did include some key direction to the states regarding these programs.

- Having automatic enrollment for workers included in the regulation as meeting the definition of "voluntary" (with an opt-out feature) will ensure that the power of inertia works to the advantage of many of the non-covered workers who will be subject to this regime.
- Further, we support the Department's encouragement to states to include an auto-escalation feature in the state programs and urge the Department to affirmatively include such a provision in the final regulation.
- Finally, because the regulation prohibits employer contributions to the employee's IRA, savings levels will be significantly constrained. While we understand from a legal and regulatory standpoint the reason underlying the decision to prohibit employer contributions to these IRAs, we believe that this will ultimately hinder the ability of individual participants to amass sufficient savings for retirement.

State Plans Should Offer Appropriate Investment Options.

The Proposed Regulation requires that state auto-IRAs be voluntary. In that regard, we urge the Department to clarify that a state program is only voluntary if participants have access to an array of prudent investment options. Generally, the investments made by participants through their auto-IRAs should consider risks such as longevity, not saving enough, inflation, and lack of diversification. As guided by PPA and the resulting QDIA regulation, ensuring participants are defaulted or have access to a well-diversified investment vehicle that balances growth with protection is key to addressing many of the risks participants face. For example, as illustrated above, requiring that participants invest in a principal preservation vehicle puts their investment readiness at risk due to lack of sufficient growth in their accounts over time and does a disservice to the already uncovered population. Small plan employees should have similar options to their large company employee counterparts and have options to be invested in well-diversified investments. Therefore, the Department should clarify that participants must be given an array of prudent investment options, including target date funds, in order for the state program to be considered voluntary.

State Auto-IRAs Should Not Mandate Participation for Non-Domiciliary Employers or their Employees.

The Department has asked for comments about the reach of the state-sponsored auto-IRAs and whether "the safe harbor should be limited to require some connection between the employers and employees covered by the program and the state that establishes the program and, if so, what kind of connection." We believe that there should be some connection between the state and the employers

and employees that would be subject to the auto-IRA mandates.[5] As the Department has stated in IB 2015-02 accompanying the Proposed Regulation, "a state has a unique representational interest in the health and welfare of ***its citizens that connects it to the in-state employers*** that choose to participate in the state MEP and their employees, such that the state should be considered to act indirectly in the interest of the participating employers." (*emphasis added*). We believe a similar analysis applies in this context. We further believe that there may be Constitutional or other federal laws that prevent states from imposing auto-IRA mandates on entities outside of their borders. Many states are looking to the Department to provide guidance with respect to the design and implementation of auto-IRA programs, so it is important that DOL make it clear that states do not have unfettered authority to compel non-resident employers or their employees to participate in plans that are legislated by a state that is not their state of domicile. The Department could, for example, provide an explanation that other federal laws limit states' ability to regulate activity outside their borders.

Employers That Sponsor Plans Should Be Exempt from State-Based Plans.

The Proposed Regulation does not directly address the issue of which employers and employees would be subject to the state's requirements to offer and be automatically enrolled in the state IRAs, respectively, other than to say that the "…program is directed toward employees who are not already eligible for some other workplace savings arrangement." The Department does not define either in the preamble or in the regulation itself what this term means. Many questions arise as a result of this vagueness, including whether employees who have not yet met age and service eligibility requirements of an employer who sponsors a plan would be required to be enrolled in the auto-IRA. In addition, would employees in another state that does not have an auto-IRA in place be subject to the auto-IRA of a company's domiciliary state if the company is a multi-state employer? How will part-time and seasonal workers be treated? The practical implications of these issues could raise administrative and cost issues for large multi-state employers as well as for states that both sponsor these programs as well as those that do not. We urge the Department to address these issues in its final regulation by exempting employers that sponsor plans for their workers if they operate those plans and exclude workers who are permitted to be excluded under ERISA.

Roll-Ins to Employer-Sponsored Plans from State-Based Plans Should be Encouraged and Supported.

Finally, we urge the Department to consider clarifications or further guidance to encourage and enable states to design their programs to facilitate rollovers into employer-provided retirement plans. It is likely that many people participating in state auto-IRA programs will eventually work for an employer that provides an ERISA-covered plan and, as noted, people benefit greatly from the advantages of such plans. In some cases, state auto-IRAs could actually inhibit participants' ability to roll their accounts into ERISA plans by, for example, requiring the use of Roth IRAs.

COMMENTS ON INTERPRETIVE BULLETIN 2015-02:

Although the IB is now effective and not subject to notice and comment, SSGA believes that the guidance raises important concepts and issues that will have significant effects on employers, employees, service providers, and states. Many of the included guidelines set precedents that we believe can and should be applicable in the private sector.

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[5] However, we see no reason for the Department to prohibit (i) non-mandated participation in state auto-IRA programs by those residing in other states and (ii) regional auto-IRA approaches.

As discussed above, we commend the Department for issuing this additional guidance, since we believe that ERISA-covered plans, such as 401(k) plans, provide individuals with important protections, as well as higher plan limits, the opportunity for employer contributions, and the ability to access institutional products with significantly lower fees. While IRAs do provide an opportunity for individuals to save for retirement, we believe that 401(k) plans remain the superior choice for a primary retirement savings plan. As mentioned before, 401(k) plans provide fiduciary protections, inspire a fiduciary mindset and offer best practices for consistency and simplicity.

Private Sector Organizations Should be Permitted to Offer "Open" Multiple Employer Plans ("MEPs")

While we appreciate the Department's recognition through the IB of the importance of MEPs as a mechanism to increase access and coverage, we believe that the open MEP concept should not be restricted to states sponsoring those plans. By restricting the ability to sponsor MEPs to states, the Department is creating an unlevel playing field, one that will greatly reduce the number of workers who will benefit from these plans.

The rationale that the Department cites in the IB is too broad in its terms, that being that "a state has a unique representational interest in the health and welfare of its citizens that connects it to the in-state employers that choose to participate in the state MEP and their employees, such that the state should be considered to act indirectly in the interest of the participating employers". SSGA believes that many private sector organizations, including trade associations that have members that do not share a business affiliation or Chambers of Commerce, also have a strong interest in the health and welfare of their member companies. In addition, unlike a state, these organizations also have a strong understanding of the demographics and needs of their member companies and are well positioned to design retirement plans that meet the needs of those companies. Therefore, we strongly urge the Department to issue additional guidance in this area that would eliminate the current nexus requirement in the private sector.

With regard to the key design elements of these ERISA-covered plans, our comments with respect to the Proposed Regulation apply here as well. Plan design matters and the appropriate design can make a significant difference in retirement readiness outcomes. Therefore, there should be automatic enrollment and auto escalation in these plans, together with institutionally priced CITs. Governance of these plans should remain flexible to be able to adapt to changing demographics and plan design and fund offerings. It is also important that the plan design account for longevity and inflation risk. While the idea of a guarantee of principal element sounds appealing, the reality of such guarantees is that returns on the participants' savings will be much lower, thereby adversely affecting their long-term retirement income security.

Conclusion

SSGA appreciates this opportunity to provide comments to the Department on this important initiative. Access to an employer-sponsored retirement plan is both a privilege and a necessity for American workers. Retirement readiness is one of the most critical issues facing our country and is even more urgent for those who do not have access to a workplace retirement plan.

In the end, we believe that a more uniform national solution to this problem will ensure that the end goal – retirement security – is achievable by most American workers. Developing a workable national framework will require input and buy-in from small business owners, practical guidance from federal policy makers and market-based solutions from retirement plan service providers and asset managers.

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GLOBAL ADVISORS.

We should also look to other countries that have sought to solve access and coverage with similar national-like programs and who are seeing success. The United Kingdom, for example, is moving quickly to promote retirement savings in the workplace among employers of all sizes with encouraging early results. In the interim, we urge the Department to ensure that the states moving forward create plans that address issues of access, simplicity, and consistency.

As the Department moves forward to finalizing this guidance, SSGA would be pleased to make representatives available to further discuss any of the comments provided herein. We look forward to working closely with the Department to ensure that more American workers have access to retirement savings plans in order that they may save sufficiently in order to enjoy a dignified retirement.

Sincerely,

Fredrik Axsater, CFA

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