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

Re: Savings Arrangements Established by States for Non-Governmental Employees and Interpretive Bulletin 2015-02 Relating to State Savings Programs

This letter is being submitted on behalf of the Defined Contribution Institutional Investment Association (DCIIA). We appreciate the opportunity to comment on the Department's proposed regulations on Savings Arrangements Established by States for Non-Governmental Employees and the related Interpretive Bulletin 2015-02 Relating to State Savings Programs.

DCIIA's members include thought-leaders from a diverse group of organizations that are very interested in this discussion, including leading record-keepers, investment consultants, investment managers, education and advice providers, trustees and custodians, law firms and other industry participants. Many of our member firms support these state retirement initiatives as a means to help bridge the retirement savings gap and improve retirement income adequacy, particularly where the specific program (1) offers institutional features, (2) provides a marketplace to promote access to, and competition within, institutional products and services and their providers or (3) seeks to encourage participation in the current employer-based retirement system. Other DCIIA member firms have shared concerns that state retirement initiatives could lead to a patchwork of conflicting retirement laws that will weaken the current employer-based system and create increased administrative burdens for employers.

DCIIA members support open architecture solutions, competition and innovation. We also share many of the same goals that we believe led the Department to undertake this initiative, namely a shared interest in promoting retirement savings and also expanding coverage, improving retirement income adequacy and promoting institutional defined

contribution plans covered by The Employee Retirement Income Security Act of 1974 (ERISA). For example:

- **Expanding Coverage.** DCIIA shares the Department’s goal of addressing the retirement savings coverage gap and we are working to better understand the problem as part of the process of solving it. While the preamble to the Department’s regulations concludes that 68 million US employees do not have access to an employer sponsored retirement savings plan through their employers, we believe it is important to note that this type of snapshot view does not accurately reflect those in the population that will have meaningful periods of access to our employer-based retirement savings system over working careers in a dynamic workforce. We think the following data points are equally important to put the access gap into proper perspective:
 - 78% of all full time civilian employees are offered a retirement plan through work – 99% of governmental employees and 74% of private industry employees.¹
 - If we look at coverage over the course of a working life (versus “point in time”) and include access to a retirement plan through a spouse, 80% of all households have been or are currently covered by an employer-sponsored plan.²
 - Low wage earner households receive a high percentage of income replacement from Social Security than higher-income households.³
 - The make-up of workers not covered by an employer-sponsored DC plan includes those under the age of 21.⁴
 - Older workers and those with higher incomes tend to be more focused on saving for retirement, and are more likely to work for employers that offer a plan.⁵
 - Also many part-time workers and younger workers move into full-time employment that provides access to a DC plan.

¹ Andrew G. Biggs and Sylvester Schieber, “Is there a Retirement Crisis?,” National Affairs, Issue #20, Summer 2014.

US Bureau of Labor Statistics, 2013. The Social Security Administration’s examination of tax records found that 72% of all workers in 2006 were offered a retirement plan by their employer; among firms with 100 or more employees, 84% of workers were offered a retirement plan.

² Gustman, Steinmeier and Tabatabai, “Health and Retirement Study”, 2010.

³ Jeffrey Brown and Scott Weisbenner, “Building Retirement Security through Defined Contribution Plans”, 2013.

⁴Craig Copeland, “Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013,” EBRI Issue Brief, no. 405, October 2014.

⁴ Craig Copeland, “Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013,” EBRI Issue Brief, no. 405, October 2014.

⁴ Lori Lucas, Callan Associates, “Plug the Drain: 401(k) Leakage and the Impact on Retirement,” Defined Contribution Institutional Investment Association White Paper, August 1, 2011. When EBRI combined the projected impact of cashouts, delays in participation by job changers, and hardship withdrawals, results show that the projected probability of success under this worst case leakage scenario drops by more than 14 percentage points.

We agree that coverage is a critical issue that needs to be addressed but believe it is equally critical to better understand who is not covered and why, when considering how to facilitate this important policy initiative. Focusing solely on those with current access to a workplace retirement savings plan would also not reflect workers temporarily out of the system because they have taken hardship withdrawals, have rollover Individual Retirement Accounts (IRAs) or that have cashed out of an employer-sponsored plan following a recent job transition. In addition to coverage, it is worth acknowledging that leakage continues to be an issue for institutional defined contribution plans that will not be solved by initiatives focused solely on access and will also need to be addressed at the state level.⁶

- **Retirement Income Adequacy.** DCIIA believes the focus on income adequacy must remain a core principle of U.S. retirement policy. Many workers across the country are not saving enough for a secure retirement. The industry has done much since the Pension Protection Act of 2006 (PPA) to help improve retirement outcomes, but more must be done. We want to continue to encourage more than minimal levels of savings, including through proactive institutional defined contribution plan design features such as auto-enrollment and auto-escalation. According to a DCIIA Plan Sponsor Survey, only 11% of small plans had adopted auto escalation while 53% of large plans had. A combined DCIIA and EBRI study has shown that a workers' income replacement outlook substantially improves when all of these features are adopted.⁷ From our perspective, approaches that focus on access at the expense of adequacy miss an important part of the public policy imperative.
- **ERISA DC Plan Strengths.** There are key advantages of employer-sponsored defined contribution plans, especially when they include institutional features, such as strong fiduciary governance structures, auto-enrollment and auto-escalation, institutional investments, education and advice solutions,⁸ all of which

⁷ DCIIA Auto Features Town Hall, Brigitte Madrian, Harvard Kennedy School, April 2, 2014. Jack VanDerhei, "The Impact of Automatic Enrollment in 401(k) Plans on Future Retirement Accumulations: A Simulation Study Based on Plan Design Modifications of Large Plan Sponsors," EBRI Issue Brief, no. 341, April 2010. Other research shows that setting the initial default rate at 6% vs. 3% and adding automatic contribution escalation to 10% of pay vs. 6% can increase retirement accumulation by 67% over the PPA baseline (3% default, escalation to 6%). Other research shows that setting the initial default rate at 6% vs. 3% and adding automatic contribution escalation to 10% of pay vs. 6% can increase retirement accumulation by 67% over the PPA baseline (3% default, escalation to 6%).

⁸ Lew Minsky, DCIIA; Lori Lucas, Callan Associates; Suzanne van Staveren, Goldman Sachs Asset Management, "Institutionalizing DC Plans: Reasons Why and Methods How," Defined Contribution Institutional Investment Association White Paper, October 13, 2011. Paper based on Defined Contribution Institutional Investment Association Legal Roundtable in Washington D.C. on May 7, 2012, "Institutionalizing DC Plans: A Starting Point for Addressing Fiduciary Issues," DCIIA Research and Surveys Committee, August 2013. **2011 Institutionalizing DC Plans: Reasons why and**

can lead to greater savings opportunities and retirement security. The combination of lower fees, more efficient portfolios with more effective asset allocation, a more significant role for professional investment management and more targeted investment management practices, and greater use of “automatic” features that increase funding, generally are consistent with producing larger retirement accounts and greater retirement income adequacy.

The industry and the Department should continue to work together to maintain an environment that supports employer-based defined contribution plans. This includes simplifying and clarifying, when possible, existing administration, reporting and disclosure requirements. The Department should also consider how best to educate employers that participate in our voluntary system, including to give them tools to manage their fiduciary duties appropriately and to stave off the tide of ERISA class action litigation. Providing legal guideposts and allowing for good faith compliance promotes policy goals, best practices and improved outcomes. Employers should be encouraged to seek out new opportunities for their employees’ retirement savings. Employers should also be protected from conflicting or multi-state retirement laws and from an environment that threatens the employer-based system.

Among the reasons most commonly cited by small employers for not adopting a defined contribution plan, we note the following:

- Cost,
- Amount of paperwork required,
- Fiduciary responsibilities and risk, particularly related to selecting and monitoring investments, and
- Reporting and testing requirements.⁹

We also note that there is no standard definition of what is considered a “small employer” when talking about access to an employer sponsored retirement savings plan. A number commonly used is any employer with fewer than 100 employees. That definition, however, may not be particularly helpful when trying to understand

Methods How; 2013 Institutionalizing DC Plans: A starting point for addressing Fiduciary Issues (“Institutionalization’ is a broad mindset that applies beyond investment options. It’s how you get people into the plan; how you design it properly; how money moves out of the plan over time; what options are offered; how fees are structured; and what type of unbiased advice might be available for participants along the way.”).

⁹ Plan Sponsor Council of America, “57th Annual Survey of Profit Sharing and 401(k) Plans,” Tables 167 and 168, December 3, 2014. For example, one key concern among small employers is the challenge of passing the 401(k) average deferral percentage test and the risk of being top heavy. A safe harbor plan design, which requires mandatory employer contributions is thus more costly, and is more frequently used by employers with fewer than 50 employees than those with 50-100 employees. PSCA 57th Annual Survey, Tables 167 and 168. The cost of preparing a Form 5500 for a small plan is also a challenge that could be reduced by streamlined reporting.

and address the coverage gap as there are vast differences in both degree of access and reasons for not offering a plan within that limit. Following are some examples:

- Only 5% of companies with 4 or fewer employees offer a plan compared to 31% of those with 26-100 employees.¹⁰
- Wage level of employees is a significant factor. Among small companies only 3% of those with average wages under \$10,000 offered a plan versus 38% of employers paying average wages between \$50,000 and \$99,999.¹¹

From the perspective of service providers, there are two key challenges to offering products that are attractive to small plans:

- Covering the fixed costs of selling and servicing a plan; and
- The necessity of using an outsourced payroll service when a 401(k) or other salary deferral type plan is offered. According to a 2013 survey by the National Small Business Association 60% of small businesses handle payroll internally and only 40% outsource.¹²

This data suggests that the issues are complex and that different solutions may be needed for different segments of the small employer market. Similarly, these same challenges would need to be addressed in state-based retirement initiatives and could also be addressed through expansion of non-state sponsored multiple employer plans (MEPs). It is notable that, according to a recent study, nearly 32% of small employers who currently do not offer a plan indicated they would be either “very” or “somewhat” likely to consider joining a multiple employer plan.¹³

In designing a solution to enhance retirement outcomes, it important to consider not just today’s retirement demographics but to look toward the future. The policies adopted in the Department’s regulations and Interpretive Bulletin will drive trends in the industry for years to come and, in particular, how employer-provided retirement plans are developed and flourish, or are challenged. For that reason, DCIIA also supports a flexible regulatory approach which allows for change and does not mandate programs that would harm the existing employer-based retirement system. There are clearly gaps in coverage to be filled, but, with the 10th anniversary of the Pension Protection Act approaching, it is notable how far we’ve come in 10 short years. The employer-based defined contribution system should have the opportunity to continue to build on the impressive gains that have been achieved. As stated earlier, DCIIA believes it is important to strike a balance between access and adequacy, as the employer plan system with its increased

¹⁰ GAO Report “Challenges and Prospects for Employees of Small Businesses” 2013.

¹¹ Wakefield Research and Capital One Sharebuilder 401(k) Online Survey.

¹² National Small Business Association, “2013 Small Business Taxation Survey,” April 11, 2013.

¹³ Catherine Collinson, “The Retirement Readiness Imperative: Overcoming the Challenges Faced by Small Companies,” 14th Annual Transamerica Retirement Survey, Transamerica Center for Retirement Studies, October 2013.

contribution limits, access to institutional investments and institutional features, and employer-driven fiduciary oversight offer a robust solution from an adequacy perspective.

If, as proposed, a state-sponsored IRA programs must be mandated so as not to be subject to ERISA, it is important to consider carefully what trends such a mandate would drive over time. We are a country of innovators. Start-up companies are part of the fabric of our economy and are established in droves every year. Many of these companies add employees quickly, others do so over time or stay small. Questions to consider include: Will the retirement programs of our new industries and innovators be employer-based defined contribution plans or will start-ups that haven't yet adopted a plan instead gravitate toward state-sponsored IRA programs? Will the Department's initiatives inadvertently promote savings vehicles that fail to improve income adequacy including because they lack features inherent in institutional defined contribution plans and have lower contribution limits? Over time, will employers inevitably shift from the more robust ERISA system to the state sponsored IRAs, thereby negatively impacting the future retirement security of their employees? It would be short sighted to permit state programs to proceed in a way that allows or even encourages employers to abandon the employer sponsored ERISA system.

DCIIA strongly support efforts to increase institutional retirement savings options, best practices and improved retirement outcomes. The Department's concerns over consumer protections are shared as well. However, a thoughtful approach is required in regulating these important areas and consideration should be given to other approaches to enhancing coverage. For example, DCIIA strongly believes that the Department should take steps to encourage innovators at leading private companies seeking to adopt ERISA's consumer protections and institutional design features in open-MEP programs. Where the sponsor demonstrates a strong interest in promoting the retirement security of its participants, those efforts should be supported. We believe there may be a number of scenarios where other entities are as well or even better situated than states to sponsor such plans. Consider, for example, non-state governmental entities, charitable institutions, associations or like-minded private entities that are dedicated to our shared goals. We believe that such programs present a real opportunity to address access without sacrificing adequacy. While great care must be given to the protection of participants in such programs, we believe there are simple common sense solutions that could be established. To that end, we point to the Treasury Department's program to ensure the security of non-bank IRA custodians as a potential model.¹⁴ The Department and/or Treasury could establish a similar process for approving state and other types of non-state open-MEP programs, invoking criteria that ensures institutional retirement savings offerings, retirement security and consumer protections will all be offered. Competition supports best practices.

¹⁴ Treasury Regulation Section 1.408-2(e)

¹⁴ U.S. Treasury Department Press Release, "U.S. Treasury Launches myRA (my Retirement Account) to Help Bridge America's Retirement Savings Gap," November 4, 2015.

DCIA applauds the Department on its focus on expanding access to the retirement savings system. We encourage the Department to fully consider the long-term effects of its proposal before finalizing it and are willing to assist with any information or support we can provide. We believe that there are positive steps forward in this proposal but the likelihood of achieving successful retirement security outcomes will be improved significantly by broadening the approach to facilitate a combination of asset pooling and risk sharing in employer-sponsored plans alongside these new state based initiatives. We look forward to working with you to advance our share goal of enhancing the retirement security of American workers.