NATIONAL INSTITUTE ON
Retirement Security
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January 19, 2016

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

Re: State Savings Arrangements Safe Harbor (RIN 1210-AB71)

To Whom It May Concern:

The National Institute on Retirement Security (NIRS) would like to thank the U.S. Department of Labor for issuing a proposed regulation[1] and an interpretative bulletin[2] regarding savings arrangements established by states for non-governmental employees.

NIRS is a non-profit research and education organization established to deepen the understanding of the value of retirement security to employees, employers, and the economy as a whole. Our vision of retirement policy simultaneously meets the needs of employers, employees and the public interest. NIRS believes that well-designed retirement programs promote the public interest by bringing together employers seeking to recruit and retain workers with employees seeking the dignity of a secure income after a lifetime of work. Such plans represent the best and most efficient way to reduce gaps in retirement security. The public interest is best-served when retirees can maintain their standard of living throughout their older years as their spending contributes to economic growth.

NIRS welcomes the opportunity to comment on the proposed regulation and interpretive bulletin in order to provide the Department with additional information on:

1) the retirement savings crisis that America currently is facing;
2) the diverse economic security needs of workers in state-sponsored savings arrangements;
3) the strong support for state-sponsored savings arrangements from the American public; and
4) how to assure that all participants in state-sponsored savings programs obtain the full benefit of tax incentives designed to encourage retirement savings.

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[1] Savings Arrangements Established by States for Non-Governmental Employees, 80 Fed. Reg. 72006 (proposed November 18, 2015) (to be codified at 29 C.F.R. pt. 2510), http://www.dol.gov/ebsa/pdf/1210-AB71-NoticeofProposedRulemaking.pdf.

[2] U.S. Department of Labor, Employee Benefits Security Administration, Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974 (November 16, 2015), http://www.dol.gov/ebsa/pdf/1210-AB74-InterpretiveBulletin2015-02.pdf.

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1) America is Facing a Retirement Savings Crisis

We appreciate the Department's acknowledgement that the nation's lack of adequate retirement savings among working households is detrimental to the future economic security of many individuals and collectively poses fiscal challenges for both state and federal governments. NIRS would like to respond to the Department's call for additional information on the dire state of retirement savings among working Americans.

Looking back at incomes of middle class retirees during the last 20 years, they benefited from a stronger retirement income security options than most workers today under age 55 are offered through their employers.[3] Since the late 1980s, private sector retirement plans have shifted from providing income from defined benefit (DB) pension plans to offering individual retirement account in defined contribution (DC) retirement plans. As a result of this shift, working households under age 45 are now half as likely to have a DB pension as pre-retiree households headed by a worker age 55 and older.[4]

The decline in DB retirement plans is troubling. In 2010, Social Security, DB pension plans and personal savings enabled more than half of middle class retirees to maintain their living standard when they retired and no longer worked.[5] And, retirees with DB income in 2010 were nine times less likely to fall into poverty than those who did not have DB income.[6] It is not merely the shift to DC retirement plans that has resulted in the current retirement crisis. With the change, more of the responsibility on saving for retirement fell on workers who had to start saving early, keep saving over their working lives, and put more money aside in individual accounts than employers needed to contribute to DB pensions plans.[7]

For a large number of working households, career participation in an employer-sponsored retirement plan is fleeting – especially among middle-income and lower-income families. Specifically, the share of households where neither the head-of-household, nor a spouse participates in job based retirement plan has increased from 42 percent in 2001 to 49 percent in 2013.[8] Among working households age 55 to 64, nearly three out of ten do not have a retirement account.[9] Even among career employees at the largest 77 employers in the U.S. that typically offer attractive benefit plans to employees, Aon Hewitt found significant gaps when they

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[3] *See* Frank Porell and Diane Oakley, *The Pension Factor 2012: The Role of Defined Benefit Pension in Reducing Elder Economic Hardships,* National Institute on Retirement Security, (2012), http://www.nirsonline.org/storage/nirs/documents/Pension%20Factor%202012/pensionfactor2012_final.pdf
[4] *See* Nari Rhee & Illana Boivie, *The Continuing Retirement Savings Crisis*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.
[5] *See* Frank Porell and Diane Oakley, *The Pension Factor 2012: The Role of Defined Benefit Pension in Reducing Elder Economic Hardships,* National Institute on Retirement Security, (2012), http://www.nirsonline.org/storage/nirs/documents/Pension%20Factor%202012/pensionfactor2012_final.pdf
[6] *See id.*
[7] *See* William Fornia and Nari Rhee, *Still a Better Bang for the Buck: Update on the Economic Efficiencies of Pensions,* National Institute on Retirement Security, (2014), http:// http://www.nirsonline.org/storage/nirs/documents/Still%20a%20Better%20Bang/bangforbuck_2014.pdf
[8] *See* Nari Rhee & Illana Boivie, *The Continuing Retirement Savings Crisis*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf.
[9] *See id.*

evaluated retirement readiness — only two of five workers are expected to be on track to retire at age 65 with a reasonably adequate retirement income.[10]

The typical working age American household is off-track towards accumulating enough savings to maintain their current living standard at retirement.[11] Nearly 45 percent of working-age households do not own any retirement account assets, whether in an employer-sponsored 401(k) type plan or in an IRA.[12] When all working households are included — not just households with retirement accounts — the median retirement account balance is $2,500 for all households and $14,500 for near-retirement households.[13] Even more troubling is the fact that 62 percent of working households age 55-64 have retirement savings less that are less than one times their annual income. This sum is far below what these households will need to maintain their standard of living in retirement.[14] A wide body of research shows that retirement income needs are increasing because Americans are living longer and facing higher costs in retirement.[15] Therefore, unless there is a change in the status quo, states and the federal government will experience growing numbers of seniors living in poverty and increased demands on public assistance programs that support this population.

We are asking the Department take note of these figures when finalizing this regulation.

2) The Diverse Economic Security Needs of Workers Require a Variety of Approaches in State-sponsored Savings Arrangements

The Department cites the figure that there are "approximately 68 million U.S. employees [that] do not have access to a retirement savings plan through their employer."[16] NIRS would like to provide the Department with further information to understand the demographics of workers who would most benefit from the creation of these state savings initiatives.

Based on national census data of individuals who are not currently covered by an employer-sponsored retirement plan, NIRS and other organizations have noted the following demographics

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[10] *See* Grace Lattyak and Rob Rieskytl, *The Real Deal: 2015 Retirement Income Adequacy at Large Companies,* Aon Hewitt (2015), http://www.aon.com/human-capital-consulting/thought-leadership/retirement/the-real-deal-2015.jsp.
[11] *See* Nari Rhee & Illana Boivie, *The Continuing Retirement Savings Crisis*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf at 2.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *See, e.g.*, Diane Oakley & Kelly Kenneally, *Pensions and Retirement Security 2015: A Roadmap for Policymakers*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/2015%20Opinion%20Research/final_opinion_research_2015.pdf; Keith Miller, et al., *The Reality of the Retirement Crisis*, Center for American Progress (2015), https://cdn.americanprogress.org/wp-content/uploads/2015/01/RetirementCrisis1.pdf.
[16] Savings Arrangements Established by States for Non-Governmental Employees, 80 Fed. Reg. 72006 (proposed November 18, 2015) (to be codified at 29 C.F.R. pt. 2510), http://www.dol.gov/ebsa/pdf/1210-AB71-NoticeofProposedRulemaking.pdf (citing Craig Copeland, Issue Brief No. 405, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends*, Emp. Benefits Res. Inst. (2014) https://www.ebri.org/pdf/briefspdf/EBRI_IB_405_Oct14.RetPart.pdf).

of workers who are not currently covered by an employer-sponsored retirement plan. These workers are:

- lower income;
- have lower wealth accumulation;
- female;
- young;
- a person of color;
- single, not married;
- a part-time employee; and
- employed by a small business.[17]

NIRS found that retirement account ownership rates display marked disparities according to income and wealth.[18] Specifically, retirement account ownership is heavily concentrated among higher-income households, especially those with a median income of $86,235.[19]

Although this information is indicative of the nation as a whole, each state's uncovered workers are heterogeneous. For example, the University of California Berkeley Center for Labor Research and Education, in a presentation to the California Secure Choice Retirement Investment Savings Board,[20] found that most Californians who are not currently covered by an employer-sponsored retirement program are:

- under the age of 36;
- more likely men than women;
- single, but living with a family member;
- individuals of color;

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[17] *See* Nari Rhee & Illana Boivie, *The Continuing Retirement Savings Crisis*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf at 8; Craig Copeland, Issue Brief No. 405, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends*, Emp. Benefits Res. Inst. (2014) https://www.ebri.org/pdf/briefspdf/EBRI_IB_405_Oct14.RetPart.pdf) and Natalie Sabadish & Monique Morrissey, *Retirement Inequality Chartbook: How the 401(k) Revolution Created a Few Big Winners and Many Losers*, Econ. Pol'y Inst., (2013) http://www.epi.org/publication/retirement-inequality-chartbook/).

[18] *See* Nari Rhee & Illana Boivie, *The Continuing Retirement Savings Crisis*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf at 8; Craig Copeland, Issue Brief No. 405, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends*, Emp. Benefits Res. Inst. (2014) https://www.ebri.org/pdf/briefspdf/EBRI_IB_405_Oct14.RetPart.pdf) and Natalie Sabadish & Monique Morrissey, *Retirement Inequality Chartbook: How the 401(k) Revolution Created a Few Big Winners and Many Losers*, Econ. Pol'y Inst., (2013) http://www.epi.org/publication/retirement-inequality-chartbook/).

[19] *See* Nari Rhee & Illana Bovie, *The Continuing Retirement Savings Crisis*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/RSC%202015/final_rsc_2015.pdf at 9.

[20] Nari Rhee, *Preliminary Market Profile for California Secure Choice,* May 26, 2015, http://www.treasurer.ca.gov/scib/presentations/2015/20150526/rhee.pdf. Dr. Rhee utilized the 2011-2013 Current Population Survey from the Bureau of Labor Statistics and the U.S. Census Bureau. The universe of data included private sector employees that are employed by a firm of five or more employees, aged 20-64, that are not offered a retirement plan.

- full-time employees, as opposed to part-time employees; and
- median income is $23,000; mean income is $33,000.

Clearly, no single retirement program will best serve the diversity of those individuals most in need of opportunities to save for retirement. Thus, we are pleased that the Department anticipated the need for a variety of plan design approaches, including options that allow for employer-and-employee contributions and automatic enrollment options, while still limiting employers to ministerial activities such as remitting employee contributions. The variety of options contemplated by the Department offer a range of choices that policymakers could utilize when crafting savings arrangements to meet the retirement needs of workers in their state.

3) The American Public Overwhelmingly Supports the Creation of State-Sponsored Savings Arrangements

The Department's proposed regulation does not acknowledge the level of public support for these plans. NIRS would like to provide the Department with information on the current public support for these publicly offered retirement plans and indications of willingness to save for retirement through both state plans and in general.

In NIRS's fourth nationwide public opinion survey, we asked Americans their opinions on state efforts to improve retirement readiness based on a brief summary of how a state savings arrangement might work.[21] We explained that:

> [A] state could set up a low-risk, low-cost automatic-enrollment retirement plan for employees without retirement plans at work. Private employers would provide their employees with access to these new retirement accounts through payroll deductions, and the plans would be overseen and administered by the state.[22]

With the above explanation, accompanied by the information that only half of workers have access to retirement plans, 71 percent of respondents agreed that these state plans are a good idea, and three-fourths indicated that they would consider participating in such plans.[23] Support for such plans was even stronger from women, younger and lower-income individuals.[24]

When NIRS asked those surveyed in a separate question about the possible actions they may take to help ensure a financially secure future, more than 60 percent of respondents indicated that they would save between one to four percent more for retirement.[25] Among younger workers, over 80

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[21] *See, e.g.*, Diane Oakley & Kelly Kenneally, *Pensions and Retirement Security 2015: A Roadmap for Policymakers*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/2015%20Opinion%20Research/final_opinion_research_2015.pdf at 15.
[22] *Id.*
[23] *Id.*
[24] *See, e.g.*, Diane Oakley & Kelly Kenneally, *Pensions and Retirement Security 2015: A Roadmap for Policymakers*, Nat'l Inst. on Retirement Security (2015), http://www.nirsonline.org/storage/nirs/documents/2015%20Opinion%20Research/final_opinion_research_2015.pdf.
[25] *Id.*

percent indicated that they would save between one and four percent of pay for retirement, while 50 percent indicated that they would save more – five percent of pay or greater.[26]

Given the overwhelming public support for state-sponsored savings programs and the willingness for Americans to save additional amounts for retirement, we ask the Department to take note in its final regulation that there is strong public support for such plans and Americans are willing to save in state-sponsored plans.

4) Assure All Participants in State-sponsored Savings Programs Obtain the Full Benefit from Tax Incentives to Encourage Retirement Savings, Especially for Low-Income Individuals Automatically Enrolled in Programs.

Based on the proposed regulation, the Department does not contemplate encouraging states to share information on existing federal income tax credits designed to facilitate retirement savings among low-and-moderate income households. NIRS would like to take this opportunity to provide the Department with a short summary of such tax credits and discuss providing individuals automatically enrolled under the safe harbor with information on these credits in order to promote adequate retirement savings among moderate- and lower-income workers.[27]

The traditional tax benefit employees obtain from saving in a 401(k) plan comes from the deferral of taxes on employee contributions. The progressive nature of the U.S. federal tax structure provides much smaller motivation to save for retirement to those who often find it hardest to save. Consider workers who have a marginal tax bracket of 25 percent and save $200 in a retirement account. Their take home pay after taxes would be reduced by only $150 because the $50 they would have paid in taxes goes into their retirement account where it accumulates over time. If their tax bracket was lower – say 15 percent – then these workers get smaller tax incentives to save. As a result, tax subsidies are poor strategies to boost savings for low income earners and not surprisingly two-thirds of these preferences currently go to the highest 20% of income earners.[28]

Congress attempted to address these disparities with the creation of a tax credit in 2001, commonly referred to as the Saver's Credit.[29] The Saver's Credit is a non-refundable income tax credit for taxpayers with adjusted gross incomes of less than $30,500 for single filers and $61,000 for joint filers. The Saver's Credit provides a "match" of up to $1,000 for a voluntary contribution to a traditional IRA, Roth IRA or to contributions to Internal Revenue Code qualified plan such as a section 401(k) plan; section 403(b) plan; section 457 plan; SIMPLE

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[26] *Id.*
[27] For an in depth understanding of these tax subsidies, Stephen Befort's article entitled *The Perfect Storm of Retirement Insecurity: Fixing the Three-Legged Stool of Social Security, Pensions and Personal Savings,* provides a thoughtful analysis of U.S. tax policy to encourage savings.
[28] *See* Stephen F. Befort, *The Perfect Storm of Retirement Insecurity: Fixing the Three-Legged Stool of Social Security, Pensions and Personal Savings*, 91 MINN. L. REV. 938, 982-983 (2007).
[29] Elective Deferrals and IRA Contributions by Certain Individuals. 26 U.S.C. § 25B (2006). I.R.C. § 25B was added by section 618 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107-16, 115 Stat, 38.

plan; simplified employee pension (SEP); or a qualified defined benefit pension plan.[30]

California's legislation – S.B. 1234 – clearly states that the state retirement plan should "disseminate information concerning . . . the [Saver's Credit] available to lower and moderate-income households for qualified savings contributions."[31] Currently, only two of the 27 states contemplating state savings arrangements have discussed the Saver's Credit.

While the Savers Credit is targeted to promoting tax-qualified retirement saving for moderate- and lower-income earners, eligible taxpayers underutilize this credit. Few workers at those income levels are aware of the tax credit and many cannot claim it since they do not pay income tax upon which the credit refunds. Specifically looking at 2006, the Congressional Budget Office calculated that 25 percent of all workers who filed tax returns who were eligible to take the Savers Credit on the basis of their income and tax liability but only 20 percent of such eligible individuals actually contributed to a retirement account.[32] Due to the complexity of filing for the Savers Credit on a Form 1040, over one third of eligible savers who contributed to a retirement account, failed to claim the credit to which they were entitled.[33]

These numbers, especially the low rate of actual savers, indicate why many of the state savings arrangements seek to expand savings for retirement by using automatic enrollment. Rather than having 20 percent of individuals taking a pro-active choice to save for retirement, the hope is that by directing a portion of workers to automatically enroll in a retirement account, only a modest percent would opt out of the arrangement. This would facilitate increased retirement savings by moderate- and lower-income earners.

The Government Accountability Office has modeled the impact of combining automatic enrollment with a modified Savers Credit.[34] Automatic enrollment in IRAs would result in low- and moderate-income households reducing their reliance on Social Security to only 62 to 80 percent of household income in retirement.[35] In addition, a modified Saver's Credit coupled with automatic enrollment in IRAs would further reduce the reliance on Social Security among low- and moderate-income households to roughly 50 to 67 percent of household income.[36]

Given that many states, under the proposed regulation, would be automatically enrolling moderate-and lower-income earners in qualified retirement plans eligible for the Saver's Credit, the number of eligible taxpayers who contributed to retirement accounts but did not utilize the Saver's Credit would increase. Thus, NIRS asks that the Department in its final regulation to clarify that providing information on the Saver's Credit is a ministerial activity under the safe

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[30] 26 U.S.C. § 25B (2006).
[31] The California Secure Choice Retirement Act, Title 21, Sec, 100012(e) (2012).
[32] Congressional Budget Office, Pub. No. 4167, *Use of Tax Incentives for Retirement Savings in 2006*, October 2011, https://www.cbo.gov/publication/42534.
[33] *Id.*
[34] U.S. Gov't Accountability Office, GAO-13-699, Automatic IRAS: Lower-Earning Households Could Realize Increases in Retirement Income (2013). The model assumes a number of reforms that have already been proposed to simplify and expand the Savers Credit would occur.
[35] *Id.*
[36] *Id.*

harbor. Furthermore, NIRS asks the Department to further encourage states to disseminate information concerning claiming the Saver's Credit to all individuals participating in these plans – especially low-and moderate-income workers.

In conclusion, given the depth of retirement savings crisis couple with overwhelming public support for sate sponsored retirement savings plans, NIRS encourages the Department to finalize these regulations as quickly as administratively possible.

Please contact us at 202-457-8190 with any questions or comments.

Sincerely,

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