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By Mail:
Office of Exemption Determinations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attention: State Savings Arrangements Safe Harbor
RIN: 1210-AB71

By Email:
e-OED@dol.gov

Comments on State Savings Arrangements Safe Harbor

Ladies and Gentlemen:

Teachers Insurance Association of America ("TIAA" or "TIAA-CREF") is grateful for the opportunity to submit brief comments on the Department of Labor's proposed safe harbor for state savings arrangements. We are pleased to have offered state policymakers developing such arrangements our program design and implementation insights, based on our century-long experience in helping millions of Americans achieve a secure retirement.[1] And we appreciate the Department's interest in facilitating these arrangements, including through its proposed safe harbor (the "Proposal").

General support

TIAA-CREF believes that all workers should have the opportunity to save at work for a secure retirement. The ultimate objective should be coverage in a retirement *plan* that includes automatic enrollment at no less than 10% of pay and lifetime income features. But today's reality is that over 67 million American workers lack access to a workplace plan.[2] To that end, TIAA-CREF applauds state policymakers' interest in crafting innovative solutions to enhance uncovered workers' retirement preparedness. In particular, TIAA-CREF supports proposals to create arrangements that would automatically enroll workers who lack a retirement plan into a payroll deduction IRA. These "Secure Choice" and related arrangements offer an important and achievable first step in closing the retirement preparedness gap.

1 Background on TIAA-CREF is included in the Appendix to this submission.

2 *E.g.*, Craig Copeland, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013*

In view of this general support, we respectfully request the Department's consideration of several technical changes to its Proposal.

Delegation

A close read of the Proposal's text could suggest limitations on a state's ability to rely on third-party vendors for services such as investment management and recordkeeping. Specifically, § 2510.3-2(h)(1)(ii) of the Proposal states that the program must be "administered by the state … or by a governmental agency or instrumentality of the State, which is responsible for investing employee savings or for selecting investment alternatives for the employees to choose." While § 2510.3-2(h)(2)(ii) authorizes reliance on service providers, the state or its designee agency or instrumentality must "retain[] *full* responsibility for operation and administration of the program." (Emphasis added.)

We see no policy rationale for limiting a state's ability to engage external service providers to carry out aspects of the arrangement that are beyond the state's expertise (such as investment management) or that could be achieved with greater efficiency if handled by a service provider that enjoys economies of scale (such as recordkeeping). And given that the proposed arrangements generally contemplate reliance on one or more authorized IRA providers to carry out at least some administrative functions, overly restricting the delegation authority could chill states from adopting and implementing such arrangements.

In this regard, an analogy to qualified tuition plan programs – commonly known as "Section 529 college savings plans" – may be useful. Through our subsidiary TIAA-CREF Tuition Financing, Inc., we have considerable experience in managing state-sponsored Section 529 college savings plans. These plans offer a useful blueprint for how a state can rely on an external vendor.

The Internal Revenue Code requires that Section 529 college savings plans be "established and maintained by a State or agency or instrumentality of a State." The Treasury Department's proposed regulations explain that a Section 529 program is so maintained if the state (or agency or instrumentality thereof) "sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, what benefits the program may provide, when penalties will apply to refunds and what those penalties will be;" and the state "is actively involved on an ongoing basis in the administration of the program, including supervising all decisions relating to the investment of assets contributed to the program." Proposed *Treas. Regs*. § 1.529-2(b).

Along similar lines, we urge that the Proposal be clarified to expressly permit states to delegate to third parties (and not require states to take "full responsibility"), provided that the state maintains responsibility for (a) setting all terms and conditions of its arrangement and (b) selecting and monitoring any third-party vendor.

Withdrawals

Under § 2510.3-2(h)(1)(vi), an arrangement may not impose any "restriction," "cost" or "penalty," beyond those that ordinarily apply to IRAs, on an employee's ability to withdraw, transfer or rollover an IRA established under such an arrangement. We have two concerns with this provision.

First, as drafted the withdrawal restriction can be read to apply at the investment-product level, which could impede an arrangement's ability to offer an investment that includes lifetime income features. Absence of immediate liquidity is an actuarially necessary element for many products that guarantee income for life, and there is no policy basis for excluding investment options that incorporate such features. Indeed, as the Department itself has acknowledged, there is considerable value to investment products that guarantee payments an individual cannot outlive.[3]

If the Department's concern is with an accountholder's asset being "locked" in an account established under a state program, we note that lifetime income products can typically be "rolled" out of one IRA and into another (*i.e.,* to an IRA maintained outside the State's arrangement). At the very least, therefore, we urge the Department to clarify that this provision does not constrain a State's ability to include investment products with lifetime income features in the State's arrangement.

Second, states should have the ability to place reasonable restrictions on the timing of withdrawals and transfers. Restrictions can guard against "leakage" – the use of retirement savings for non-retirement uses. The specter of leakage is particularly significant in the context of Roth IRAs (since the Internal Revenue Code generally permits accountholders under age 59½ to withdraw from her Roth IRA the amount of contributions without penalty). We believe strongly that retirement savings should be used for retirement purposes, and a state should have the ability to restrict withdrawals and to consider, for instance, incorporating the Tax Code's "hardship withdrawal" rules into its arrangement. Moreover, restrictions on the frequency and timing of withdrawals and transfers can help to contain the overall cost of administering the program. We urge the Department to bear in mind the significant challenge of administering many accounts that are likely to hold relatively low balances (at least for an initial period), and not to limit program design in such a manner that drives up costs.

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Again, we are grateful to the Department for its commitment to facilitating State-based arrangements. Thank you for your consideration of these views.

Sincerely yours,

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[3] *See, e.g.,* Department of Labor, Employee Benefits Security Administration, *Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans*, 75 Fed. Reg. 5253 *et seq.* (Feb. 2, 2010).

Appendix: About TIAA-CREF

TIAA-CREF is the leading provider of retirement services in the not-for-profit and K-12 markets and a global asset manager with more than $855 billion in assets under management (as of December 31, 2015). The organization was founded nearly a century ago with the mission to "serve those who serve others" and "aid and strengthen" our client institutions. Teachers Insurance and Annuity Association of America ("TIAA") was formed by the Carnegie Foundation for the Advancement of Teaching in 1918, is incorporated as a stock life insurance company in the State of New York and operates on a not-for-profit basis. The College Retirement Equities Fund ("CREF") – the world's first variable annuity – was created in 1952 to give retirement savers the ability to invest in equities and reduce their exposure to inflation risk.

Throughout its history, TIAA-CREF has helped millions of Americans achieve financial well-being and a secure retirement. Today, TIAA-CREF is a Fortune 100 company with 12,500 employees and 152 offices nationwide, serving 5 million individuals and over 16,000 institutions. As TIAA-CREF works to fulfill its mission in the 21st century, we have grown our asset management capabilities, becoming a three-time winner of the Lipper Award for Best Overall Large Fund Company in 2012, 2013, and 2014, the world's largest agriculture investor, and the world's second-largest commercial real estate manager. We have undertaken this growth to support and enable the core focus of our business: helping the people we serve achieve a financially secure retirement. We believe that focus, along with our nonprofit heritage and unique mission, set us apart in the financial services industry. Our unique corporate structure allows us to focus our efforts on successful retirement outcomes for participants. TIAA has no outside shareholders, other than our Board of Overseers, which is a not-for-profit entity. Importantly, according to TIAA's corporate charter, TIAA functions without profit to the corporation or its shareholders. CREF, a companion organization, is operated at cost. That means that TIAA-CREF can use operating earnings to fortify the overall organization. As a result, our corporate interests are aligned with those of our clients – both at the plan and individual investor level.

Today TIAA-CREF offers to both plan sponsors and IRA investors a diversified array of ten annuities, proprietary mutual funds advised by an affiliate, and non-proprietary mutual funds from scores of different fund families. We believe we act in the best interest of plan participants and IRA Owners at any interaction with them – whether we are selling these products, educating people, or providing fiduciary advice, the products are designed to be in their best interests. They provide our participants with the security they need in retirement. The TIAA employees who market and sell these products to the plans we recordkeep and to our plan participant and IRA clients are not paid commissions.

Our clients largely use defined contribution plans as their primary retirement vehicles, and understand the value of lifetime income vehicles and our TIAA and CREF annuities. TIAA-CREF drives results – in 2014 we paid $4.7 billion to retired clients, including 28,000 annuitants over the age of 90.