

March 4, 2016

Ms. Christina Elliot  
Acting Executive Director  
California Secure Choice Retirement Savings Board  
Office of State Treasurer John Chiang  
915 Capitol Mall, Room 110  
Sacramento, CA 95814

**Re: Comment on the Final Report to the California Secure Choice Retirement Savings Investment Board – RFP No. CSCRSIB03-14**

Dear Ms. Elliot:

The American Retirement Association (“ARA”) is writing to comment on a recommendation contained in the final report<sup>1</sup> to the California Secure Choice Retirement Savings Investment Board. The ARA thanks the Board for the thought, time, and work put into the implementation of legislation enacted in 2012 that authorized the consideration of the California Secure Choice Retirement Savings Program. The completion of the program design, market analysis, and financial feasibility study represents a key milestone that enables the state legislature to consider further legislation to implement the Program.

The ARA is a national organization of more than 25,000 members, including over 1,600 members in California, who provide consulting and administrative services to American workers, savers and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. The ARA is the coordinating entity for its four underlying affiliate organizations, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”) and the ASPPA College of Pension Actuaries (“ACOPA”). ARA members are diverse but united in a common dedication to America’s private retirement system.

The ARA wishes to comment on the report’s recommendation that California policymakers should consider whether the Board should have discretion to establish a multiple employer plan (MEP) at some future date in order to receive voluntary employer matching contributions. The ARA strongly disagrees with this recommendation.

The ARA, as ASPPA, was actively supportive of the effort to enact the California Secure Choice Retirement Savings Trust Act in 2012. In fact, the ARA has consistently and actively supported proposals to expand retirement plan coverage in the private workforce through state based automatic enrollment IRA proposals that require employers who do not offer any other

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<sup>1</sup> California Secure Choice Market Analysis, Feasibility Study, and Program Design Consultant Services – RFP No. CSCRSIB03-14 prepared by Overture Financial LLC (February 9, 2016)

retirement savings arrangement to automatically enroll employees in a state-based auto-IRA program. The ARA believes that this approach increases access to and use of payroll deduction retirement savings while placing as minimal a burden as possible on both the employer and the state.

However, the creation of a state based qualified retirement plan of any type, including a MEP, should be rejected, because California should not compete with its own small, private businesses for no reasonable purpose. In California, the marketplace for qualified retirement plans, like 401(k)s, as well as SIMPLE IRAs or other retirement savings vehicles, is robust and highly competitive. California's private service providers compete in this market, create jobs, and pay taxes. The recommendation would allow the state to compete directly with these private service providers even though small businesses already have many low-cost options to provide qualified plans to their employees.

In addition, a MEP for private employers would be subject to ERISA in addition to the coverage and nondiscrimination requirements of the Internal Revenue Code. There would be a substantial administrative and liability cost to the state. There is a long list of responsibilities for the service provider – in this case, the state – for each employer participating in the qualified plan. These responsibilities include: (1) determining business ownership; (2) gathering payroll data and determining if the right elements of pay have been included or excluded; (3) reviewing reported hours worked for reasonableness, and using that information to determine which employees must be included in testing and contribution allocations; (4) determining key and highly compensated employees; (5) completing discrimination and top heavy testing; (6) processing refunds to correct any failed testing; and (7) allocating employer contributions according to the plan's formula as well as completing required federal filing and notices. Other services that must be provided on an ongoing basis include distribution processing; document processing for adopting employers and amendments to keep the plan in compliance with federal law. Because the state would be selecting the investments and record keeper, California would become a fiduciary for the plan covered by the program and would need insurance covering its exposure. The state will not be able to eliminate its responsibility for the risk of non-compliance by contracting with a third party.

The state based MEP recommendation contained in the final report is a well-intentioned, but bad idea. The creation of a state based qualified plan, including a MEP, for private employers will not solve a real problem, but it would result in substantial cost and liability for California and could hurt businesses in California that provide retirement plan services. Legislation enabling the California Secure Choice Retirement Savings Trust should not include authority to establish a MEP, or any other ERISA arrangement, for private employers.

Sincerely,



Brian H. Graff, Esq., APM  
Executive Director/CEO  
American Retirement Association

