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March 25, 2016

The Honorable John Chiang
California State Treasurer
Chairman, California Secure Choice Retirement Savings Program
915 Capitol Mall, Room 110
Sacramento, CA 95814

RE: Professional Employer Organizations (PEOs) and Administration of the
Secure Choice Program.

Dear John:

It was great to run into you in Los Angeles before the Secure Choice hearing. I trust in the interim all with you has been well.

I am writing to you on behalf of my client, Insperity, which is a PEO and a full services human resources and payroll administration firm with an extensive clientele of businesses of all sizes throughout California. At this time, Insperity has no position on the general advisability of proceeding with the Secure Choice Program. As an entity that has extensive experience complying with employment tax and benefit administration programs, however, Insperity would like to offer some very specific comments about a significant element of the Final Report (the Report) currently pending before the Board.

On pages 11 and 104 of the Report, there is a recommendation that the "Party that controls payroll (e.g. temp agency) is responsible for compliance". For the reasons discussed below, Insperity instead feels that the responsibility for compliance should rest with "client employers" (i.e., the worksite employer), at least as it relates to PEOs.

Employers (and Therefore Their Workers) Move In and Out of PEO Relationships,
Creating Problems for both the Employer and the Worker.

PEOs like Insperity differ significantly from temporary agencies and so-called "staffing companies". With rare exceptions, PEOs take the existing workforce of a business and during the course of the contractual relationship with the business assume an employment relationship with that business' workers for certain limited purposes, which include payroll administration or health benefits. Unlike temporary or staffing agencies, however, PEOs generally do not engage in recruitment or hiring of new employees in their own name for the purposes of supplementing a client's existing permanent workforce.

Client employers often move in and out of PEO relationships in the course of any given time period. If compliance responsibility (reporting, determination of eligibility, record retention, etc.) were placed at the PEO level, as the Report suggests, not only would compliance tracking be problematic when the client employer leaves the PEO relationship, or engages a different PEO, but unintended negative consequences could be potentially created for the worker as well.

For example, if an employee had opted out of the Secure Choice program when the client employer was not with a PEO, they could easily be unaware of an automatic enrollment feature upon the initiation of a new PEO arrangement. That worker may be surprised by a sudden unanticipated decrease in their paycheck which could make it difficult for them to meet their existing monthly financial obligations.

Finally, compliance and financial responsibility should remain at the client employer level because the client employer controls much of the relevant information to determine client and employee eligibility, including the employee's period of service and hours worked. This issue of control of the relevant information is particularly troublesome with regard to determining the eligibility of part-time or temporary employees.

General Recommendations as an Alternative to the Recommendation in the Final Report.

In lieu of the recommendation in the Report, we would prefer that a PEO's responsibility be limited to making the deductions from the employee's paycheck, crediting them back to the client employer and having the client employer remit them to the state agency. This is current procedure for how Insperity handles situations when the client employer has its own retirement plan and chooses not to involve Insperity with recordkeeping. This also makes sense because if a PEO offers a retirement plan but the client employer chooses not to have that offer extended to its workforce, the client employer should assume the responsibility for compliance with the Secure Choice.

For these reasons, Insperity asks that the Secure Choice Board modify the Report to place the compliance responsibility on the client employer where a PEO relationship is involved. We have additional observations for your consideration, set forth below:

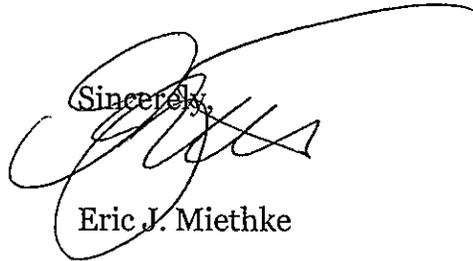
Other Recommendations

- Remittance of payroll deductions to a third party (state agency or state-designated recordkeeper)
 - Preferably, client employers would be responsible to remit deductions to the IRA/trust. Many PEOs may not have the ability to remit funds directly to multiple recordkeepers, and there are significant concerns on how the funds would be remitted. The responsibility for failure to remit funds should rest with the client employer, not the PEO.
 - If PEOs are to be responsible to remit the funds, there should be a single location/recordkeeper for all remittances. Otherwise, a PEO with hundreds

of clients could have extensive time and financial impact to remit to multiple different locations.

- If an employee can designate a variety of IRA custodians, then the client employer remitting the contributions should be entitled to rely upon the employee's direction and be relieved of liability for any delayed or improper account establishments, investment delays or other similar events beyond the employer's control.
 - A standardized format for file feeds should be developed with recordkeepers to ease the remittance process, and restrictions should be implemented to prevent unilateral file format changes by recordkeepers without adequate notice to implement any changes.
 - Regardless of who is responsible to remit funds, there should be a specified safe harbor time period to remit funds without penalties after they are withheld. This period should correspond with the Department of Labor Safe Harbor rule for small plans as outlined under 29 CFR § 2510.3-102(a)(2).
- Additional Compliance Issues
 - Determination of "eligible employers" should be based on the size and location of the client (not based on size or location of the PEO).
 - Clients that provide their employees with access to an employer sponsored 401k plan (either sponsored by the PEO or by the client) should be treated as having provided an offer of an employer sponsored plan to their employees.

We appreciate the opportunity to present our views on the Final Report to you and the Commission. Please feel free to contact me at the above numbers if I can provide additional information about our position on this matter.

Sincerely,

Eric J. Miethke

EJM/vb

cc: Ms. Christina Elliott
Acting Director, CA Secure Choice Retirement Savings Board
915 Capitol Mall, Room 110
Sacramento, CA 95814