



February 7, 2012

The Honorable Anthony Petrucci
The Honorable Michael A. Costello
Joint Committee on Financial Services
State House, Room 254
Boston, MA 02133

RE: H.1194, An Act relative to universal retirement accounts

Dear Chairmen Petrucci and Costello and Members of the Committee:

The Securities Industry and Financial Markets Association (SIFMA)¹ is writing to express our concern about House Bill 1194, an Act relative to universal voluntary retirement accounts. This bill would create a state-run, two-tiered retirement savings program for the private sector. The state would make an employer-based retirement savings plan available to any employer with 100 or fewer employees; it would also make workplace based individual retirement accounts available to all private sector workers. We feel strongly that the proposal is a step in the wrong direction - forcing Massachusetts companies to compete with the State for business while burdening the State with additional costs and liability.

Current Provider Market in MA

The securities industry plays a critical role in Massachusetts. Based on 2010 Bureau of Economic Analysis information, the securities industry directly employs 44,412 workers in the State and is responsible for the employment of an additional 128,924 people. These workers provide retirement services to employers of all sizes and industries – from large for-profit employers to small non-profit employers.

The underlying premise for this proposal is that small- and medium-sized Massachusetts businesses and not-for-profit employers do not currently have access to reasonable cost retirement savings plans. This simply is not true. The market for retirement savings alternatives in Massachusetts is robust and highly competitive. Fairly priced retirement savings

¹ The Securities Industry and Financial Markets Association brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

options, including 401(k), 403(b), 401(a), and 457(b) plans as well as SIMPLE, SEP and traditional IRAs are readily available. There is no reason for the state to enter into competition with Massachusetts financial services companies that are already providing these services, particularly when they employ thousands of state residents.

Costs

Proponents of the legislation claim the proposal would benefit employers and employees at no cost to the state and its taxpayers. The bill does seek to avoid traditional start-up costs by requiring that such costs be paid using federal or philanthropic funds. We certainly cannot speculate whether such funds will be forthcoming, but caution that start-up costs will likely be significant given that Massachusetts would be the first state seeking IRS approval and managing ERISA compliance. The State will surely incur ongoing compliance and oversight costs.

There would also be liability to the state by creating a plan. These liability concerns include liability for a breach of fiduciary duty under the Employee Retirement Income Security Act. Since this will be a plan for private employers, it will be governed by ERISA. State plans are exempt from ERISA, but private plans, which this would be, are not. As a result, the state would be running a plan under ERISA, which would entail:

- Liability for failure to file the necessary IRS forms and accounting mistakes;
- Liability for any complications of dealing with non-discrimination testing;
- Liability for a breach of fiduciary duty under ERISA, which includes liability for paying unreasonable plan expenses and monitoring all the options offered within the plan and making adjustments as necessary;
- Liability for ensuring that no prohibited transactions are occurring, including monitoring for conflicts between a plan and a party in interest;
- Personal liability for State employees and officials who are responsible for making decisions related to investments and management of the plan; and
- Co-fiduciary liability for the breaches of other fiduciaries when the State knows or should have known of the other fiduciary's breach.

All of these additional complications arise when managing a plan for private employers.

In addition, the cost savings hoped for by using economies of scale would be unlikely to be realized. Providing services to many small businesses will be much less efficient because each employer is unique. Small employers use payroll systems that range from paper-based records, in-house software, or third party service provider. As a result, the state plan administrator or the state's outsourced provider must be able to receive and process payroll on different days, varying amounts by person and by employer, and track down missing contributions. This situation is quite different than a state can achieve with its own retirement plan or a large private sector employer.

Related Legislation

We would also like to use this opportunity to express concerns about a similar bill, House Bill 3754. We would encourage this committee to take a look at this legislation, which was heard by the Joint Committee on Public Service. It too is intended to expand access to retirement plan coverage; however, it is more narrowly drawn for only non-profit employers. Even with the narrower scope, it has many of the same problems described above, including costs and liability to the state of Massachusetts, as well as harming private employers operating in the state of Massachusetts who provide these same services.

Positive Steps Moving Forward

SIFMA would like to work with state policymakers to expand retirement plan coverage. We believe that education about the options that currently exist for small and non-profit employers would help increase coverage. For example, many small employers are not aware that the federal government provides for a \$500 per year tax credit for three years if a business starts a new plan. In addition, there are educational programs at the federal level about the benefits of offering a retirement plan to employees that could be replicated on the state level. This could entail partnerships between small employer groups, various providers and schools or civic meetings. SIFMA would be happy to work with the state on such efforts.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Lisa J. Bleier".

Lisa J. Bleier
Managing Director