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At the Hearing

Before the Economic Matter Committee

House Bill 1318, An Act Concerning Maryland Secure Choice Retirement Savings Program and Maryland Secure Choice Retirement Savings Trust

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Thank you very much for the opportunity to submit this statement for the record on behalf of the Securities Industry and Financial Markets Association. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. Its mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth.

We agree there is a savings challenge in this country. We strongly believe individuals need to save more, along with more education, and more partnering between employers, providers and employees. This is a challenge that we need to address as a society. Financial literacy and general investment education needs to become a part of the basic education provided throughout the school years. For those already past those years, there needs to be general outreach by the states, the federal government, employers and providers to educate about compounding interest, finding appropriate investments, monitoring their portfolio, and making changes when appropriate.

We believe; however, this proposal is a step in the wrong direction because it would burden the State with additional costs and liability to operate the program and competes with the private market which today provides a wide variety of individual retirement account options for employees who are ready to contribute a percentage of their annual compensation towards retirement.

Current Provider Market in MD

The underlying premise for this proposal is that small- and medium-sized Maryland 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 Maryland is robust and highly competitive, with a wide range of products and services offered by a variety of Maryland providers, including brokers, mutual fund complexes, insurance companies, banks and credit unions. Fairly priced retirement savings options, including 401(k), 403(b), 401(a), and 457(b) plans as well as SIMPLE, SEP and traditional and Roth IRAs are readily available, with SIMPLE and SEP-IRAs being particularly good low cost options for small employers. Moreover, in instances where an employer does not provide a plan, IRAs are readily available at most financial institutions in Maryland and around the country, in various formats, including online do-it-yourself, with limited financial advisor support from a call center, or with a one on one financial advisor relationship. There is no reason for the State to enter into competition with Maryland financial services companies who are employing thousands of workers in the State and that are already providing these services, and doing so at no direct cost to the State.

The Maryland Study

The second premise to offering this program is that the costs to the state will be minimal or non-existent. That is also simply not true. The Maryland Supplemental Retirement Plans (MSRP) study, which was requested in 2007 legislation, looked at this issue and concluded that a Voluntary Employee Accounts Program would require a subsidy of between $300,000 and $500,000 a year for at least 5 to 7 years. After a certain participation threshold has been reached, the State cost per employee account would be $20 a year in addition to standard service provider fees of between .07% and 1% ($10-$25). The study noted that it is difficult to achieve economies of scale in the small employer market because the provider must deal with multiple employers with separate payroll systems, record keeping, and plan termination requirements. This situation is quite different than the economies of scale a State can achieve with its own retirement plan or the economies of scale that could be achieved by a large private sector employer.

Activities in other States

The third premise is that there are already similar programs operating through other states, in particular, in California. To clarify, while a bill was signed into law intending to establish a similar retirement program for private sector employees, that law has not been implemented, and has yet to meet several hurdles before it can move towards implementation. These hurdles include conducting a study regarding the feasibility of such a plan; seeking and receiving favorable guidance from both the Department of Labor and the IRS; securing start up funding and once all these steps are achieved, gaining specific approval of the legislature to move forward, among other requirements.

The Department of Retirement Services for Washington State conducted a similar study to that conducted in Maryland and found that, once certain service thresholds have been reached, a state-administered 401k plan would likely involve an administrative fee of $200-$800 per participant; private sector administered payroll deduction or individual IRA options would result in annual administrative fees of $20-$60 and investment fees of .02-.13%. Thus the states would, after a period of time subsidizing the program, end up offering a product to employees that costs the same as or substantially more than that currently being offered by the private sector.

ERISA

We are also concerned about the conflicts that would undoubtedly arise between federal laws governing retirement plans and laws enacted by individual states – in effect, what ERISA was designed to address in 1975. Different states would most likely have different rules governing operation, accumulation and distributions, which we feel could result in employee and employer confusion on how the state versus federal or another state's plans and programs operate. We are also concerned that employees who save for retirement in a state plan will not have the same rights and protections that are provided under the federal regime. For example, a state based retirement plan may not provide spousal protections (which are provided under the Employee Retirement Income Security Act (ERISA)). Another example is that the state benefit may not be portable to a different state should the employee relocate outside the state sponsoring the program.

It is for these good reasons, among others, that ERISA was created. While ERISA does mean additional costs for anyone operating an ERISA plan, it also means additional protections for participants and a uniform set of rules and requirements governing them.

We believe ERISA would appropriately apply in the case of a state sponsored plan run for private employees. The Department of Labor issued an Advisory Opinion last year to Connecticut Governor Malloy which addressed this issue as well. Advisory Opinion 2012-01A was issued in response to the Connecticut State legislature's attempt to provide health insurance coverage for private sector workers. In it the DOL advised that private sector employers are not governmental agencies or instrumentalities Section 4 of ERISA, discussing applicability of ERISA Title I, does not differentiate between welfare benefit plans and pension benefit plans and the analysis is identical for coverage of private sector workers in a pension benefit plan. It is clear from this Advisory Opinion that ERISA would apply to this type of plan, and all of the requirements and costs associated with ERISA plans would therefore apply.

There is additional guidance from the Department of Labor that would be applicable as well, since it is only the Department of Labor who can determine whether or not ERISA would apply. There is a safe harbor for certain payroll deduction arrangements; however, there are several requirements that must be met. These requirements include limited involvement from the employer. There is guidance that implies that the inclusion of an automatic enrollment feature is sufficient to be considered employer involvement such that ERISA applies.

Once ERISA application is clear, then the State would be liable for complying with it. These liability concerns include liability for a breach of fiduciary duty under ERISA, which entails:

- Liability for failure to file the necessary IRS forms and accounting mistakes,
- Liability for any complications of complying with annual non-discrimination testing,
- Liability for a breach of fiduciary duty under ERISA, which includes liability for paying unreasonable plan expenses and monitoring all the investment options offered or utilized within the plan and making timely adjustments as determined necessary, and
- Liability for ensuring that no prohibited transactions are occurring, including monitoring for conflicts between a plan and a party in interest.

<u>Positive Steps Moving Forward</u>

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. Some small employers may still be unfamiliar with the ability to offer a low cost IRA based retirement program. In addition, there are educational programs at the federal level about the benefits to any employer offering a retirement plan to employees that could be replicated on the state level at what we think would be a minimal cost in time and money. This could entail partnerships between small employer groups, various providers and the state, such as by holding meetings at schools or civic organizations at a local level. SIFMA would be happy to work with the State on such efforts.

Thank you for your consideration.