



March 31, 2016

The Honorable Troy E. Brown
P.O. Box 974
Napoleonville, LA 70390

RE: SB 53, Providing for the Louisiana Secure Choice Savings Plan

Dear Senator Brown:

On behalf of the Securities Industry and Financial Markets Association (“SIFMA”),¹ I would like to provide you with comments based on our review of your recently introduced legislation – SB 53, which would create the Louisiana Secure Choice Savings Plan and Board to create, administer and maintain a state run retirement plan for private sector workers. SIFMA represents the shared interests of hundreds of securities firms, banks and asset managers, many of whom have a presence in Louisiana. Many of our members provide various services to retirement plans, including advisory services, investment opportunities and plan recordkeeping.

SIFMA agrees that there is a retirement savings challenge in this country; however, we do not believe that the proposed state run retirement savings plan is the appropriate solution. As such, we strongly urge you to consider the following when contemplating the establishment of a state run retirement plan for private sector workers in the state of Louisiana:

- (1) **Uncertain Regulatory Environment** – Earlier this year, recognizing that states face significant legal hurdles in trying to establish retirement plans similar to those proposed by SB 53, President Obama ordered the U.S. Department of Labor (“DOL”) to take certain measures to lower those hurdles. Subsequently, the DOL proposed a rule intended to provide states with a limited “safe harbor” from ERISA for certain state run retirement savings plans. SIFMA, along with 66 other entities, commented on this rule before the January 19, 2016 deadline. We would encourage Louisiana to wait for the DOL to review the comments and issue a final rule, which may differ greatly from the initial proposal. For instance, several commenters raised concerns about situations where the State – through actions over which the State has no control (i.e., the employer action in violation of the safe harbor rule) – could lose the protections of the safe harbor. Moreover, due to the expansive statutory language in ERISA relating to preemption, DOL Secretary Perez recognized the shortcomings of any proposal, stating publicly that “The [proposed] safe harbor is not an air-tight guarantee... The federal courts are the ultimate arbiter on the question of whether state retirement plans are legal or not.” (Emphasis added.) Adding to the regulatory uncertainty surround state run retirement plans for private sector workers, the US Supreme Court recently (March 1, 2016) issued an opinion in the case of *Gobeille v Liberty Mutual*, finding that ERISA expressly pre-empts “any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.”

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit <http://www.sifma.org>.

- (2) **Legal Difficulties Facing SB 53** – The previous discussion of the proposed limited ERISA safe harbor is particularly important in light of the requirements set forth in §295.7(C) of SB 53, which states that “[t]he state of Louisiana shall have no authority over the monies in the Plan Trust. The state shall have no liability for and does not guarantee the funds or benefits of this plan.” While, according to the U.S. Department of Labor, there may not be a way to achieve the zero-liability provision of §295.7(C), compliance with the proposed partial safe harbor would be the only way to limit Louisiana’s liability. Unfortunately, SB 53 currently contains a number of positive provisions which would violate the proposed safe harbor rules, such as voluntary participation from small business employees and options permitting employer contributions. In fact, given the desire to limit Louisiana’s liability and the desire to provide the state’s private sector employees with strong retirement plans (i.e., plans that allow for auto-enrollment, employer contributions, a choice of providers and investment options, minimal fees, and voluntary participation for small business employees) and investor protections (as evidenced by §295.7), SIFMA strongly urges you to consider the adoption of a Marketplace-style proposal, which is like the best (and may be the only) to fulfill the requirements of §295.7(C) of this bill.
- (3) **Marketplace Programs** - In May 2015, Washington State enacted and funded the first voluntary small business retirement plan “Marketplace” in the nation, which establishes a web-portal structure to connect private sector employers with qualifying plan vendors and the myRA program (discussed below). Additionally, Washington State will do mailings and outreach to eligible employers or other organizations that interact with these employers. A second-in-the-nation Marketplace was established in New Jersey shortly thereafter (January 2016) and was largely based on the Washington State law. Notably, these public-private cooperative Marketplaces were highlighted in recent guidance by the U.S. Department of Labor as providing full ERISA protections workers, while placing no liability on the State (such liability is assumed by the private-market providers). We encourage you to look at these Marketplace laws to see if their voluntary nature, strong education component, and low cost/low risk of liability approach is of potential interest before moving forward with a far more costly and comprehensive plan.
- (4) **Program Costs** – In addition to the above concerns, there are also questions about the potential costs and benefits of such a plan. A few states have estimated the cost of establishing a “low cost,” IRA-type program. Illinois approved a similar program in late 2014 - which has yet to be funded – with a fiscal note of \$15 to \$20 million in the first two years.² Connecticut considered but did not pass a bill in 2014 that had an estimated price tag of \$7.2 - \$10.4 million in start-up costs,³ and a recent multi-year study in California estimates up to \$129 million in required up-front financing if the State chose to adopt a 3% default contribution, as proposed by SB 53.⁴ Of course, that is assuming that the California study accurately estimated a number of variables properly considered all potential costs – assumptions that were recently questioned in economic analyses by both the Investment Company Institute and the California Coalition for Financial Security.

In addition to start-up costs, Louisiana would also incur costs related to managing the program. In fact, a 2016 report commissioned by the Connecticut Retirement Security Board has stated that a plan would require over \$1 billion in assets in order to become economically feasible on a long-

² Fiscal Note, Illinois SB 2758 (2014).

³ Fiscal Note, Connecticut SB 249 (2014).

⁴ “[Presentation](#) of Top Two Investment Options,” Overture Financial, LLC, Agenda Item 1 of Jan. 11, 2016 meeting of California Secure Choice Retirement Savings Investment Board, p. 48.

term basis (and – in Connecticut – would likely require 252,000 accounts contributing at a 6% default rate to reach that target).⁵ We would encourage you to understand these costs and weigh them against any measurable benefits, especially as SB 53 proposes a costly, Board-centric structure. We also encourage you to compare these costs and benefits to other alternatives, such as investor education, the promotion of myRA accounts, or the development of a voluntary market-based public private partnership, similar to the law enacted in Washington State, which has been fully funded for only \$526,000.

- (5) **Underlying Obstacles to Saving** – As you consider the creation of a costly state-run retirement savings plan, we encourage you to consider the underlying obstacles to saving. It is important that any state proposal identify and address these underlying issues, including, for example, competing financial needs and a lack of understanding about the importance of saving over time. Notably, a 2015 survey conducted by AARP in New York City found that, “No money left after paying bills” was the number one obstacle to retirement savings. Additionally, a recently released study by the California Secure Choice Retirement Savings Investment Board (the “Online Survey of Employees Without Workplace Retirement Plans”) concluded the “the leading reasons for not saving more for retirement are not making enough money or needing to pay off debts.” Indeed, not earning enough, paying off debt, unexpected expenses and a focus on helping family were the top four responses, affecting 74% of all respondents. We encourage the State to first determine why its residents are undersaving before proposing a solution that may not address the problem’s core.
- (6) **Access to Retirement Savings** – Of the various obstacles to retirement savings, we do not believe that access is the primary reason behind workers undersaving. The market for retirement savings products in Louisiana is already robust and highly competitive. There are nearly 4,000 individuals in the State working in the securities industry and over 60,000 people employed by entities falling within the broader category of finance and insurance. These industries all provide numerous 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. Where an employer does not provide a plan, IRAs are readily available on-line and at most financial institutions in the State.

Moreover, that same California report found that 71% of uncovered workers are already saving for retirement. Furthermore, the average retirement savings rate for these workers was 4.5% of household income, while 26% reported saving between 5 and 9% of household income and 10% reported saving an impressive 19% or more. If these numbers are also true in Maryland, it is possible that a state-run program would not be filling an access gap for “uncovered” workers, but merely adding a new savings vehicle – at a substantial cost and with unknown liability – to an already robust market. Before you consider developing a state run retirement savings structure that competes with the private marketplace, we encourage you to explore whether education about existing high quality, low cost options would address the issue at substantially lower cost and risk.

- (7) **New Federal myRA** – On November 4, 2015, after an almost year-long pilot program, the federal government launched a new retirement program known as myRA (www.myRA.gov). It is a simple, safe, affordable, and voluntary way for employees to save for retirement. The program provides all the tax benefits of a Roth IRA, is fully portable, requires no employer contribution, takes less than ten minutes to establish, and is provided at no cost to the saver and their employer. In the words of U.S. Treasury Secretary Jacob Lew, “myRA has no fees, no risk of losing money

⁵ “[Report](#) to the Legislature,” Connecticut Retirement Security Board, Jan. 1, 2016, p. 5.

and no minimum balance or contribution requirements. To make saving easier than ever, you can now put savings into myRA directly from your bank account.” SIFMA strongly supports the myRA program. We would encourage you to consider the full potential of this no-fee, carefully developed program before considering developing an expensive state alternative.

- (8) **Employers Will Likely Drop Stronger Plans** - We also suggest that you consider whether the creation of a state sponsored plan would encourage employers with strong existing plans to drop their current plan in favor of the State alternative. The State is looking to enhance, not reduce, retirement savings. Offering options that encourage employers with strong plans to discontinue those plans in favor of a state offering, which would likely have lower permissible contribution levels and no matching funds (to fit within a partial ERISA safe harbor), would be counterproductive to that objective.

In short, there is a retirement savings problem in Louisiana, but we believe that a state sponsored retirement plan for private sector workers is not the answer. We appreciate your willingness to consider our concerns, and look forward to continuing to work with you to directly address the issue of undersaving in Louisiana. If you have any questions or if there is any further information we can provide, please contact me at 212-313-1233 or nlancia@sifma.org.

Sincerely,



Nancy Lancia
Managing Director
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