



March 7, 2014

The Honorable Gary A. Holder-Winfield
The Honorable Peter A. Tercyak
Connecticut General Assembly
Labor and Public Employees Committee
Room 3800, Legislative Office Building
Hartford, CT 06106

RE: SB 249 – An Act Promoting Retirement Savings

Dear Chairmen Holder-Winfield and Tercyak:

On behalf of the Securities Industry and Financial Markets Association (SIFMA)¹, I am writing to express our concerns with SB 249, An Act Promoting Retirement Savings. SIFMA represents the shared interests of hundreds of securities firms, banks and asset managers, many of whom have a presence in Connecticut. Many of our members provide various services to retirement plans, including advisory services, investment opportunities and plan recordkeeping.

We agree there is a savings challenge in this country. Individuals need to save more for retirement and need to better understand the benefits of compounding interest, diversification, and not accessing retirement savings accounts for other purposes. Additional education is part of this process, with age appropriate programs for children and adults. Enhanced federal and state programs and incentives encouraging more employers to offer these plans and more employees to utilize them would be helpful, and SIFMA would be happy to work with the State on such efforts.

We, however, believe SB 249 is a step in the wrong direction. It would burden the State with additional costs and liability to develop, establish and administer a new program. Such a program would directly compete 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 Connecticut

One of the underlying premises for this proposal is that Connecticut businesses and private employers do not currently have access to reasonably priced retirement savings plans. This simply is

¹ The Securities Industry and Financial Markets Association (SIFMA) 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 has offices in New York and in Washington, D.C. For more information, visit <http://www.sifma.org>.

not true. The market for retirement savings alternatives in Connecticut is robust and highly competitive, with a wide range of products and services offered by a variety of Connecticut providers, including brokers, mutual fund complexes, insurance companies, banks and credit unions. Even Costco has an online 401(k) plan available for small businesses.

There are currently 22,300 individuals in Connecticut working in the securities industry and a total of 110,800 people in the State employed in the broader category of finance and insurance industries. These industries provide numerous fairly priced retirement savings options. These options include 401(k), 403(b), 401(a), and 457(b) plans as well as SIMPLE, SEP and traditional and Roth IRAs. Indeed, last week, ThinkAdvisor rated Connecticut as the #1 state for 401(k)s in the country based on the concentration of strong plans, with plans measured on their design, management and performance.² Moreover, in instances where an employer does not provide a plan, IRAs are readily available at most financial institutions in Connecticut.

In addition, President Obama recently announced³ “MyRA” (“My Retirement Account”), a program to be offered through employers via a Roth IRA account, backed by the U.S. government much like a savings bond, and portable at any time to a private sector retirement account. SIFMA supports the creation of the MyRA savings bond as a tool to promote retirement savings. The program is developing quickly, with an RFP⁴ issued by Treasury on Feb. 27.

SIFMA would recommend that the State help increase coverage by focusing its efforts on educating both businesses and individuals about the various options that exist, including the MyRA program. We would be happy to work with the State on such efforts. Furthermore, there is a vast array of free and readily available educational tools through government websites such as the federal Department of Labor, which offers a “Retirement Savings Toolkit,”⁵ and other private websites such as www.choosetosave.org. Websites such as these cut through the complexity and help businesses and individuals make informed decisions about their retirement options. There is no reason for the State to enter into direct competition with Connecticut financial services companies who are employing tens of thousands of workers in the State and who are already providing these services at no direct cost to the State.

SIFMA would also suggest that, before establishing a new program, the State should review the many different existing product offerings to determine if there is a gap in availability and consider what factors - other than access - may be preventing workers from taking advantage of existing options.

No Other State Runs a Plan for Non-Public Workers

Another misconception is that this is a low risk proposition as there are already similar programs operating in other states. This also is not true. California did pass legislation in 2012⁶ creating a Secure Choice Retirement Savings Investment Board to explore the issue. The State Treasurer’s

² <http://www.thinkadvisor.com/2014/03/05/top-10-best-states-for-401k-plans?ref=nav>

³ <http://www.whitehouse.gov/the-press-office/2014/01/29/fact-sheet-opportunity-all-securing-dignified-retirement-all-americans>

⁴ http://www.treasurydirect.gov/readysavegrow/start_saving/RetirementSavingsSolicitation.pdf

⁵ <http://www.dol.gov/ebsa/publications/FIToolkit.html>

⁶ http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1201-1250/sb_1234_bill_20120928_chaptered.pdf

website⁷ makes quite clear that the Board must conduct a privately or federally funded market analysis and feasibility study “to determine whether the legal and practical conditions for implementation can be met.” The program cannot proceed unless the Board concludes, based on the analysis, that the program will be self-sustaining.⁸ That feasibility analysis has not yet begun.

The yet to be constructed California plan also cannot be implemented “if it is determined that the program is an employee benefit plan under the federal Employee Retirement Income Security Act.”⁹ The Board must obtain from the federal Department of Labor an Advisory Opinion that ERISA does not apply. ERISA applicability would result in substantial additional costs and liability for both the state and participating employers, something the legislature was not interested in pursuing. We believe, as further described below, that DOL will determine that ERISA applies.

The California plan also cannot be implemented unless and until the IRS finds that the program qualifies for the same “favorable federal income tax treatment ordinarily accorded to IRAs under the Internal Revenue Code.”¹⁰ The Board must get this Determination Letter ruling before moving forward.

Even after these hurdles are cleared, the Board must still go back to the legislature for approval before implementing any plan. All of this suggests a fairly lengthy and expensive process. States considering following California’s lead may want to await the outcome in California before moving forward.

With respect to other jurisdictions, six states, including Connecticut, had similar legislation introduced in 2013 but none was enacted or passed their house of origin.¹¹ Thus far in 2014, no state has enacted such a proposal. Maine expressly rejected it, the Indiana and Washington bills died in fiscal committees, and the Arizona bill was double referred and was not heard by either committee by the relevant committee deadline.

ERISA Applicability and Liability

We are also concerned about the conflicts that would undoubtedly arise between federal regulations governing retirement plans and laws enacted by individual states – in effect, what the Employee Retirement Income Security Act (ERISA) was designed to address in 1974. 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 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 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.

⁷ <http://www.treasurer.ca.gov/scib/>

⁸ See page 17, Section 100042.

⁹ See page 17, Section 100043.

¹⁰ See page 17, Section 100043.

¹¹ Oregon decided to conduct a retirement savings study, for which the state has created a task force. Massachusetts passed a much narrower voluntary bill in 2012 targeted at small not-for-profits; this has not yet been implemented.

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.

Part of the costs, in our view, relate to the federal regulations vendors already face in the retirement space. We believe ERISA would appropriately apply in the case of a state sponsored plan run for private employees and would create substantial ERISA compliance costs and financial liability for the state. The Department of Labor issued an Advisory Opinion in 2012 to Connecticut Governor Malloy which is of relevance. Advisory Opinion 2012-01A was issued in response to the Connecticut legislature's attempt to provide health insurance coverage for certain private sector workers who had a contract with the state. DOL advised that private sector employers are not governmental agencies or instrumentalities and that therefore a provision exempting governmental plans from ERISA did not apply. The analysis for coverage of private sector employees in a pension benefit plan should be comparable. We believe ERISA would apply to the plan envisioned under SB 249; all of the requirements and costs associated with ERISA plans should therefore also apply.

There is additional guidance from the Department of Labor that would be applicable as well. 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. SB 249 includes a provision permitting employer contributions; employer contributions would clearly trigger ERISA applicability. SB 249 is also drafted as a multiple employer plan, which would subject the program to ERISA and subject each participating employer to ERISA's fiduciary provisions.

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.

Positive Steps Moving Forward

SIFMA would like to work with state policymakers to expand retirement plan coverage. We believe that education about the options and incentives that currently exist for small and non-profit employers, as well as the new MyRA program expected by the end of 2014, would help increase coverage.

For example, some small employers may be unfamiliar with the ability to offer a low cost IRA based retirement program while others may be unaware of existing federal incentives to start a new plan. There are educational programs at the federal level on these topics that could be replicated at the

state level at minimal cost in time and money. This could entail partnerships between small employer groups, various providers and the State. SIFMA would be happy to work with the State on such efforts.

Thank you for your consideration. Please feel free to contact me at 212-313-1311 or SIFMA's lobbyist, Patrick McCabe at 860-293-2581 should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kim Chamberlain".

Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

Cc: Members of the Labor and Public Employees Committee