



April 18, 2016

The Honorable Lois Court
The Honorable Mike Foote
House Finance Committee
Colorado State Capitol
200 East Colfax
Denver, CO 80203

RE: H.B. 1403, An Act Concerning the Creation of the Colorado Secure Savings Plan.

Dear Chair Court and Vice-Chair Foote:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is a national trade association which brings together the shared interests of hundreds of broker-dealers, banks and asset managers. Many of our members have a strong presence in Colorado, where they provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.

We appreciate the opportunity to provide comments on H.B. 1403, An Act Concerning the Creation of the Colorado Secure Savings Plan. We commend the bill sponsors for their commitment to improving retirement savings. We agree that there is a retirement savings challenge in this country and that action must be taken to address this challenge. We, however, respectfully disagree that a state run retirement savings plan for private sector workers is an appropriate solution.

As you consider the legislation, we urge you to take the following into account:

- **Access to Retirement Savings.** The market for retirement savings products in Colorado is robust and highly competitive, and has seen notable growth over recent years. Indeed, there are over 30,000 direct investment services workers supporting an additional 35,000 individuals in the state of Colorado, and over 110,000 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.
- **Underlying Obstacles to Savings.** With a variety of options already available, factors other than access may be keeping people from saving. It is important that any state proposal address some of the underlying issues with retirement undersaving, including, for example, competing financial needs, as well as cost and risk, and a lack of understanding about the importance of saving over time – in fact, an AARP survey has found that “No money left after paying bills” was the leading

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>.

obstacle to retirement savings. We would encourage the State to first determine why its residents aren't saving enough before proposing a solution.

- **ERISA Applicability.** As you may know, there has been significant debate across the country as to whether a state run plan for private sector workers is a pension plan covered by the Employee Retirement Income Security Act of 1974 (ERISA). According to the U.S. Department of Labor (“DOL”), “[p]ension plans covered by ERISA are subject to various statutory and regulatory requirements These include reporting and disclosure rules and stringent conduct standards derived from trust law for plan fiduciaries.”

DOL has issued a proposed rule that, if finalized, would provide states with a limited safe harbor from ERISA. We would encourage you to wait for DOL's final rule before moving forward with any legislation.

Some of the questions that need to be resolved include the following:

- Under DOL's proposed rule, the employer's participation in the program must be required by State law. H.B. 1403 requires employers of a certain size to participate but allows other employers to choose to participate. The California Secure Choice Retirement Savings Investment Board (CSCIB) has asked DOL to change the current interpretation, noting that the participation of “non-mandated employers could cause an entire program to fail the safe harbor and become an ERISA plan, with potentially disastrous consequences”
- DOL's proposed rule permits state savings programs to utilize one or more service or investment providers “provided that the State . . . retains full responsibility for the operation and administration of the program.” H.B. 1403 would appear to try and pass that responsibility on to the third party with whom the state contracts.
- Under DOL's proposed rule, the state has to assume “responsibility for the security of payroll deductions and employee savings.”
- Under DOL's proposed rule, the State has to “adopt[] measures to ensure that employees are notified of their rights under the program, and creat[e] a mechanism for enforcement of those rights.” Some states are seeking clarification that the program administrator will do the notification and that the State is not required to add special enforcement mechanisms or create additional regulatory and judicial systems to allow employees to enforce their program rights.
- In addition, under DOL's proposed rule, the State program cannot “impose any restrictions on [employee] withdrawals or impose any cost or penalty on transfers or rollovers permitted under the Internal Revenue Code.” Some states considering a state plan would like the option to impose a hardship standard on withdrawals.

The existence of an effective safe harbor is critical to the proposed legislation. We would strongly encourage the legislature to wait for the DOL safe harbor to be finalized before approving any legislation implementing a Secure Choice plan.

Of course, even with a safe harbor, legal challenges are possible. Labor Secretary Perez himself has 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.”

- **Employers With Strong Retirement Plans Will Likely Re-evaluate, Thereby Lowering Overall Retirement Saving.** We are also very concerned that H.B. 1403 will encourage Colorado 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 saving, and offering options that encourage employers with existing plans to instead enroll in a state offering, with lower permissible contribution levels and no matching funds, would be counterproductive to that objective.
- **New Federal myRA.** As you may know, on November 4, 2015, after an almost year-long pilot program and years of careful research and development, the U.S. Department of Treasury launched a new retirement program known as myRA (www.myRA.gov). It is specifically targeted to help low-income workers, small businesses, and those without access to an employer-sponsored retirement program, and it is a simple, safe, affordable, and voluntary way for employees to save for retirement. In the words of U.S. Treasury Secretary Jacob Lew, “myRA has no fees, no risk of losing money 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.” Payroll deduction and tax refund deposits are also available. SIFMA strongly supports the myRA program and would encourage the legislature to compare this program to the Secure Choice Program before moving forward.
- **Marketplace Programs.** As you may know, in May 2015, Washington State enacted and funded the first voluntary small business retirement plan “Marketplace” in the nation, which focuses on private providers and myRA and establishes a web-portal structure to connect private sector employers with qualifying plan vendors. A second-in-the-nation Marketplace was established in New Jersey in January 2016. We would encourage you to look at these Marketplace laws to see if their voluntary nature, strong education and outreach components, and low cost/low risk of liability approach are of potential interest before moving forward with a far more costly and comprehensive plan.

Notably, Marketplace programs were specifically highlighted in DOL interpretive bulletin [2015-02](#), and offer the greatest levels of investor protection and the lowest levels of cost and risk to the state of any option discussed in the bulletin or the proposed, partial safe harbor.

We appreciate your willingness to consider our concerns. Please do not hesitate to contact me at 212-313-1311 with any questions.

Sincerely,



Kim Chamberlain
Managing Director and Associate General Counsel
State Government Affairs

Cc: House Finance Committee