STATEMENT OF

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

BEFORE THE

NEW JERSEY STATE ASSEMBLY LABOR COMMITTEE

HEARING ON

A. 4275 - NEW JERSEY SECURE CHOICE SAVINGS PROGRAM ACT

June 18, 2015

Good Morning Mr. Speaker and Members of the Assembly Labor Committee. Thank you for the opportunity to provide testimony on A. 4275, the New Jersey Secure Choice Savings Program, on behalf of the Securities Industry and Financial Markets Association (SIFMA)[1]. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers located throughout New Jersey and across the country. In New Jersey, the securities industry as a whole employs 42,509 people, with 191,347 individuals employed in the broader category of finance and insurance, and our mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth.

A. 4275 would establish an Automatic Enrollment Individual Retirement Account (IRA) Program run by the State, with the stated intent of promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner.

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 also be helpful, and SIFMA would be happy to work with the State on such efforts.

[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 Washington, D.C. For more information, visit http://www.sifma.org.

We believe, however, that A. 4275 presents a number of challenges: it would burden the State, taxpayers and small businesses with additional costs (including start-up costs for the program, prior to the receipt of the proposed fee-income); open the State and employers to liability under the Employee Retirement Income Security Act of 1974 (ERISA); and 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.

State Estimates on Cost

One premise of the proposed plan is that the costs to the state will be minimal or non-existent. That is simply not true. A number of states have contemplated such legislation and have either developed a fiscal estimate, or chose to undertake a study instead. We have the benefit today of looking at those states' previous experience to see how this might work in New Jersey.

For example, in Illinois (which ranks 5th in population among the 50 states), the fiscal note attached to a similar proposal included an estimate of $15 - $20 million in start-up costs over the first two years, prior to the receipt of any income from investment fees. Connecticut (ranking 29th in population) estimated that their proposal would include $6 – $8 million in costs to the state. It is fair to conclude that in New Jersey (which ranks 11th in population) the start-up costs would likely be closer to the Illinois estimate than the Connecticut estimate.

Further, in 2009, the State of Washington conducted a study on voluntary accounts and the Department of Retirement Services found that private sector administered payroll deduction or IRA options would result in annual administrative fees of $20-$60 and investment fees of 0.02-0.13%. The current proposal in New Jersey caps administrative fees at 0.75 percent of the fund's total balance. Thus the State could, 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 specifically designed to address when it was enacted 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 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 ERISA). Another example is that the state plan may not be portable between states 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.

Part of the costs relate, in our view, to the federal regulations vendors already face in the retirement space, which we believe the State will also become subject to. 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 U.S. Department of Labor (DOL) issued an Advisory Opinion in 2012 to Connecticut which addressed this issue as well. Advisory Opinion 2012-01A was issued in response to the Connecticut General Assembly's attempt to provide health insurance coverage for private sector workers – in it, DOL advised that private sector employers are not governmental agencies or instrumentalities, and because ERISA does not differentiate between welfare benefit plans and pension benefit plans, the analysis is identical for coverage of private sector workers in a pension benefit plan.

Additionally, in an information letter, DOL stated that the Department of the Treasury's MyRA program, "would not be establishing or maintaining an 'employee benefit plan'" under ERISA because (i) it is voluntary in nature, (ii) it is established, sponsored, and administered by the federal government, and (iii) the "absence of any employer funding or role in its administration or design." Under this guidance, it is reasonable to conclude that the proposed plan, which is mandatory on employers and would require employers to take actions in addition to the simple diversion of a portion of their employee's paycheck, could be covered by ERISA.

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 (for example, under ERISA, defined compensation retirement plans are required to issue more than 9 separate notices to plan participants at various times, and failure to provide timely notice of *any* of these forms generally brings a penalty of $100 per person per day – a penalty that can quickly skyrocket given the mandatory-on-employer, auto-enroll nature of the proposed program),
- 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.

More effective, less risky alternatives already exist

There is also a misconception that similar programs are already operating in other states. This is not true. Illinois (2014) and Massachusetts (2012) have passed laws authorizing a plan, but have neither funded, nor taken steps to establish one. In California, the proposed plan still has many hurdles to clear, including the conclusion of a market analysis and feasibility study, receipt of permissions from DOL and the IRS, and legislative approval of the developed program.

Since 2010, 25 states have considered legislation to establish a state run retirement savings plan for private sector workers, but no state has established such a plan. As such, many of the questions surrounding these proposals – including the cost to the state prior to the receipt of fee-income, the extent of the state's ERISA liability under such a proposal, the administrative cost and similar liability burdens on small businesses and whether the administrative fees proposed would cover the operating costs of the program, remain unanswered.

It is for this reason that SIFMA supports the Marketplace Model that was enacted in Washington State earlier this year. Under this program, the state would harness the presence of the financial services industry in New Jersey by developing a portal which would provide businesses a single point of access to any retirement plan that meets certain pre-determined criteria (such as low cost, low fees and low contribution minimums). Because the plan utilizes the private marketplace, all plans would provide full ERISA protections, completely insulate the State from any liability, and cost a fraction of the proposed plan – Washington State estimated that the program would cost up to $500,000, and the program is arranged so that all or any part of it can be funded through third party grants.

Moreover, as in Washington State, the Marketplace Model uses the new MyRA program as a cornerstone of its program. MyRA is a simple, safe, and affordable way for employees with access to direct deposit to save for retirement. The program provides all the tax benefits of a Roth IRA, is fully portable (including between states), requires no employer contribution, and is provided with no cost to the saver. Plan contributions are backed by the Federal Government, and will be invested in a Treasury security, meaning the balance will never decrease in value and will earn the same interest rate as federal employees enrolled in the Thrift Savings Plan Government Securities Investment Fund. This program was developed by the Department of Treasury after an extensive research and development process, is targeted at helping precisely those same workers that A. 4275 seeks to help and would make an excellent flagship plan for a New Jersey Marketplace.

Current Provider Market in New Jersey

The market for retirement savings alternatives in New Jersey is robust and highly competitive, with a wide range of products and services offered by a variety of New Jersey providers, including brokers, mutual fund complexes, insurance companies, banks and credit unions.

With more than 40,000 individuals in New Jersey working directly in the securities industry, and nearly 200,000 employees in the finance and insurance sectors, the financial services industry provides 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.

Moreover, in instances where an employer does not provide a plan, IRAs are readily available at most financial institutions in New Jersey – whether urban, suburban or rural - and around the country, in various formats (including online) and with varied levels of support, from a one-on-one financial advisor relationship to a 'do-it-yourself' account with limited financial advisor support from a call center: indeed, there are plans to meet a wide variety of needs and preferences. There is no reason for the State to enter into direct competition with New Jersey financial services companies who are employing thousands of workers in the State and who are already providing these services at no direct cost to the State.

A key role the State could play would be to use its existing resources to engage in outreach and education about the options that currently exist for small and non-profit employers to help increase coverage, rather than entering the market itself. There is a vast array of free and readily available educational tools through government websites such as DOL's website, which offers a "Retirement Savings Toolkit"[2] and other private websites such as www.choosetosave.org. Websites such as these exist to cut through the complexity and help businesses and individuals make informed decisions about their retirement options.

Positive Steps Moving Forward

SIFMA would like to work with state policymakers to expand retirement plan coverage. We believe that education and outreach about the options that currently exist for employers, including the no cost, no fee MyRA program, would help to significantly increase coverage. For example, many small employers are not aware that the federal government provides 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 at 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 of our concerns. For further information, please contact Nancy Lancia of SIFMA at (212) 313-1233 or nlancia@sifma.org.

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[2] http://www.dol.gov/ebsa/publications/FIToolkit.html