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On Behalf of the Securities Industry and Financial Markets Association

To the Senate Budget & Taxation Committee

SB 1007 – Maryland Small Business Retirement Savings Program and Trust

March 11, 2016

Thank you very much for the opportunity to speak today on behalf of the Securities Industry and Financial Markets Association ("SIFMA").[1] SIFMA represents the shared interests of hundreds of securities firms, banks and asset managers, many of whom have a presence in Maryland. Many of our members provide various services to retirement plans, including advisory services, investment opportunities and plan recordkeeping.

We appreciate the opportunity to provide feedback on SB 1007, which would create the Maryland Small Business Retirement Savings Program to create, administer and maintain a state run IRA plan for private sector workers. We agree 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.

SIFMA strongly urges you to consider the following when contemplating the establishment of a state run retirement plan for private sector workers in the state of Maryland:

(1) **<u>Uncertain Regulatory Environment</u>** – Earlier this year, recognizing that states face significant legal hurdles in trying to establish retirement plans similar to those proposed by SB 1007, 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 (including the Maryland Commission on Retirement Security and Savings) commented on this rule before the January 19, 2016 deadline. We would encourage Maryland to wait for the DOL to review the comments and issue a final rule, which may differ greatly from the initial proposal. For instance, the letter from the Maryland Commission specifically sought clarity on portions of the proposal, including the "ability to delegate authority to a state agency or state-chartered corporation" – and that is just one of the many provisions that various states and service providers suggested that the DOL amend. Moreover, due to the expansive statutory language in ERISA relating to preemption, DOL Secretary Perez recognized the shortcomings of any proposal, stating publicly that "<u>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</u>." (Emphasis added.) Further, the US Supreme Court just issued an opinion in the case of Gobeille v Liberty Mutual on March 1, 2016, finding that ERISA expressly pre-empts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan."

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[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) **<u>Unclear Provisions in SB 1007</u>** – In addition to the murky regulatory environment currently facing states, there are a number of questions surrounding the specific mechanisms utilized in SB 1007. For example:

- Would this Program utilize a Trust, or another type of entity? The use of a Trust would require compliance with a very different set of obligations than the use of another type of entity.

- Would this program be voluntary on employers? While some portions of the bill appear to contemplate a voluntary-on-employer setup, sec. 12-402(B)(1) states that, "An eligible employer **shall** (Emphasis Added) enroll all eligible employees in the Program, unless the employee elects not to participate in the Program."

- Would the state be subject to ERISA under this program? Several sections of the bill refer to employees who may voluntarily be included in the Program, including an "eligible employee of a nonparticipating employer." However, DOL's proposed, limited safe harbor requires any employer obligations to be mandatory. Further, as highlighted in the letter from the Maryland Commission, it is unclear if the program can utilize a Board the way SB 1007 contemplates, and still fit within the proposed, limited safe harbor.

(3) **<u>Program Costs</u>** - There are also questions about the potential costs and benefits of such a plan. A few states have estimated the cost of establishing an IRA type program. Illinois approved a similar program in late 2014 - <u>which has yet to be funded</u> – 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 1007.[4] In addition to start-up costs, Maryland 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-term basis (and would likely require 252,000 accounts contributing at a 6% default rate to reach that target).[5] <u>We would encourage you to understand these costs and weigh them against any measurable benefits, especially as SB 1007 proposes a costly, Board-centric structure</u>. 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.

(4) **<u>Underlying Obstacles to Saving</u>** – 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"

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[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.
[5] "Report to the Legislature," Connecticut Retirement Security Board, Jan. 1, 2016, p. 5.

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. <u>We encourage the State to first determine why its residents are undersaving before proposing a solution that may not address the problem's core</u>.

(5) **<u>Access to Retirement Savings</u>** – 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 Maryland is already robust and highly competitive. There are more than 17,000 individuals in the State working in the securities industry and nearly 100,000 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 <u>71% of uncovered workers are already saving for retirement</u>. 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, <u>we encourage you to explore whether education about existing high quality, low cost options would address the issue at substantially lower cost and risk</u>.

(6) **<u>New Federal myRA</u>** – 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. 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." SIFMA strongly supports the myRA program. <u>We would encourage you to consider the full potential of this no-fee, carefully developed program before considering developing an expensive state alternative</u>.

(7) **<u>Marketplace Programs</u>** - 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. 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. <u>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</u>.

(8) **<u>Employers Will Likely Drop Stronger Plans</u>** - 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, would be counterproductive to that objective. In fact, by allowing eligible employees of nonparticipating employers to voluntarily enroll in the proposed program, SB 1007 would, in effect, be requiring small businesses with existing retirement plans to simultaneously administer two different sets of payroll deduction programs. This will only lead to more states dropping their more robust, more effective, existing savings plan in favor of the state-run option.

In short, there is a retirement savings problem in Maryland, 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 Maryland.