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Invested in America

November 4, 2019

The Honorable James T. Welch
Chair, Joint Committee on Financial Services
24 Beacon St., Room 413-B
Boston, MA 02133

The Honorable James M. Murphy
Chair, Joint Committee on Financial Services
24 Beacon St., Room 254
Boston, MA 02133

RE: H. 1075, H. 1076, H. 1103, S. 574, S. 602, Establishing a Massachusetts Secure Choice Program

Dear Chairs Welch & Murphy:

The Securities Industry and Financial Markets Association[1] is a national trade association which brings together the shared interests of more than 340 broker-dealers, banks and asset managers. Many of our members have a strong presence in Massachusetts where they provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.

As the legislature considers the various proposals outlined above, each of which would create a mandatory-on-employer state-run retirement plan for private sector workers, SIFMA strongly urges you to consider the following:

(1) **Current Access to Retirement Savings**. The market for retirement savings products in Massachusetts is robust and highly competitive. More than 175,000 people are employed in the finance and insurance industries, which 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. IRAs are also readily available online and at most financial institutions. Lack of access is not the problem.

(2) **Factors Other Than Access May Be Creating 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 under-saving, including competing financial needs and a lack of understanding about the importance of saving over time. In fact, an AARP survey found that "No money left after paying bills" was the leading obstacle to retirement savings. Additionally, a survey by the California Secure Choice Retirement Savings Investment Board concluded that "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. A state-run auto IRA program does not address this.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. For more information, visit sifma.org.

(3) **A State-Run Plan Could Encourage Employers with Strong Retirement Plans to Re-evaluate, Thereby Lowering Overall Retirement Savings**. We are very concerned that a state-run plan could encourage employers with strong existing plans to drop their current plan in favor of a state alternative. Employers often contribute up to 6% of an employee's gross salary directly to his or her retirement account. A state program could curb the use of employer contributions if employers with strong retirement savings plans move to the state plan for ease of compliance, lower costs or other reasons – ultimately leading to lower account balances. In fact, a December 2015 market feasibility analysis of the proposed state-run plan in Connecticut showed that 45% of employers with existing plans would consider moving to a state-sponsored plan.

(4) **The Cost of a Proposed Solution.** States have estimated that the start-up or up-front financing costs of a program that includes a state-run auto-IRA can range from $8 million to $170+ million dollars, depending on the type of plan and the size of the state. Conversely, the marketplace start-up costs in Washington State, described below, were roughly $500k and the estimated cost of the Utah tax credit, as well as certain education initiatives that some states have explored, would all have a lower fiscal impact.

(5) **When Assessing Cost, it is Important Not to Overstate Projections.** Oregon's plan (OregonSaves) is currently the only operative state-run, mandatory-on-employer, auto-IRA in the country. It has been operating for about two years and all employers with 10+ employees are currently required to participate. In the program's initial feasibility study, the state estimated a participation rate between 75 and 80%. A recent analysis puts the participation rate at 62%. The study estimated annual contributions over $600m/year by Year 3. Only $12m has been saved as of this past February – with estimated start-up costs of $11m. Finally, the feasibility study estimated that the plan's budget would reach net positive after 7 years. Current estimates – if met – predict that it may take up to 10 years. The state even had to re-evaluate the number of potentially eligible workers.[2] Any errors in the starting estimates of any proposed ongoing program could significantly understate the cost to the state or the length of time the state would need to break-even or develop a self-sustaining program.

(6) **Potential Liabilities for the State.** ERISA is a vital investor protection law that has been effectively protecting investors since the 1970s. It also places certain legal and regulatory burdens on plan sponsors (in this case, the State of Massachusetts). For many years, states have found these regulations too burdensome to move forward with a plan. To help facilitate the creation of a certain type of state-run plan, the DOL finalized a rule in 2016 that gave states a limited safe harbor from ERISA. Citing investor protection and other concerns, Congress repealed the rule in 2017. As such, states with qualifying plans – as several of these proposals could create – will be subject to all the federal requirements. They may face penalties in administrative actions or be civilly liable for violating federal law, including failing to comply with document production deadlines and other obligations. States may also be subject to other litigation challenges, such as the settled case in Oregon[3] or the ongoing challenge to California.[4]

(7) **Potential Harm to Participants.** A state-run plan for private sector workers could pose risks to savers. The state should consider the value of the protections afforded by ERISA – particularly to women, children and heirs of deceased account holders – and what is potentially lost in a non-ERISA plan.

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[2] *See:* Oregon's initial feasibility report, and updated feasibility report presented to the program's Board in March 2018, an analysis of the plan by the Boston College Center for Retirement Research and the February 2019 update shared by the Board.

[3] Wealth Management, "First state run retirement plan faces legal challenge," October 2017. Available at: http://www.wealthmanagement.com/retirement-planning/first-state-run-retirement-plan-faces-legal-challenge.

[4] Howard Jarvis Taxpayers Association v. the California Secure Choice Retirement Savings Program, ED-CA, No. 2:18-cv-01584-MCE-KJN.

A state-run auto-IRA program could also harm investors who have IRA eligibility issues. There are several (often complicated) reasons why someone might be ineligible, including having a spouse with access to a workplace plan or being married and filing taxes separately. This could mean that too many residents, through no fault of their own, could find themselves penalized by the IRS.

In addition, Bankrate reported in January that 60% of people couldn't handle a $1000 unexpected expense without borrowing money or going into debt. A state-run plan should consider how to make sure workers understand that an emergency savings account takes precedence over retirement savings, particularly if lack of emergency savings results in savers taking on additional debt or paying significant early withdrawal penalties.

(8) **A Wide Variety of Possible Solutions Exist.** As previously mentioned, there are a wide variety of potential solutions to the retirement savings crisis which we urge you to consider. For instance:

- In May 2015, Washington State enacted and funded the first voluntary small business retirement plan "Marketplace" in the nation, which works with private providers and establishes a web-portal structure to connect private sector employers with qualifying plans. This program officially launched on March 19, 2018 and is available at www.retirementmarketplace.com;

- Vermont enacted a law authorizing the development of a multiple employer plan; and

- Utah has offered a tax credit for employers that provide retirement savings plans to their employees.

In short, we believe there are a variety of available options within the private sector to strengthen the retirement savings market in Massachusetts. We appreciate your willingness to consider our concerns. Please do not hesitate to contact me at 202-962-7411 or our Massachusetts lobbyists Roger Donoghue at 617-827-5998 and Tara O'Donnell at 617-242-1970 if you have any questions.

Sincerely,

Kim Chamberlain

Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA