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Before the Joint Committee on Labor and Public Employees
At the Hearing on
S.B. 54, An Act Establishing a Retirement Savings Plan for Low-Income Private Sector Workers
Hartford, CT
February 26, 2013

Thank you very much for the opportunity to testify here today. I am here on behalf of the Securities Industry and Financial Markets Association. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. Its mission is to support a strong financial industry, investor opportunity, capital formation, job creation, and economic growth.

I am here to express our concern about Senate Bill 54, an Act to establish a retirement savings plan for low-income private sector workers. Under the bill, the state would make a defined benefit plan available to any low-income private sector employee who does not have access to an employer-sponsored retirement plan by allowing them to contribute a portion of their salary to a state-administered retirement trust. The proposal is obviously in its early stages of development. We, however, believe it is a step in the wrong direction because it would burden the State with additional costs and liability and compete with the private market, which today provides various individual retirement account options for employees who are ready to contribute a percentage of their annual salary towards retirement.

Current Provider Market in CT

The underlying premise for this proposal is that small- and medium-sized Connecticut businesses and not-for-profit employers do not currently have access to reasonable cost retirement savings plans. This simply is not true. The market for retirement savings alternatives in Connecticut is robust and highly competitive. 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 are readily available, with SIMPLE and SEP-IRAs being particularly good options for small employers. Moreover, in instances where an employer does not provide a plan, IRAs are readily available at most financial institutions. There is no reason for the state to enter into competition with Connecticut financial services companies who are employing thousands of workers in the state that are already providing these services.

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ERISA

We are also concerned about the conflicts that could arise between federal governing retirement plans and laws enacted by individual states. Different states would most likely have different rules governing accumulation and distributions, which we feel could result in employee 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 benefit may not be portable to a different state should the employee relocate to another state.

It is for these good reasons, among others, that the Employee Retirement Income Security Act, which I moments ago referred to as ERISA, was created. While ERISA does mean additional costs for anyone operating an ERISA plan, it also means additional protections.

We believe ERISA would appropriately apply in the case of a plan run for private employees. The Department of Labor issued an Advisory Opinion last year to Governor Malloy which addressed this issue as well. Advisory Opinion 2012-01A was issued in response to the legislature's attempt to provide health insurance coverage for private sector workers. Section 4 of the Employee Retirement Income Security Act (ERISA), discussing applicability of ERISA Title I, does not differentiate between welfare benefit plans and pension benefit plans and the analysis is identical for coverage of private sector workers in a pension benefit plan. It is clear from the Advisory Opinion that ERISA would apply, and all of the requirements and costs associated with ERISA plans would therefore apply.

Costs

State creation of a defined benefit plan for individual private sector workers has many pitfalls, including significant costs to taxpayers. There will be start-up costs to create a plan, ongoing compliance and oversight costs, as well as the basic costs that come with running any defined benefit plan, including PBGC premiums (which are currently $35 per individual but go to $49 per participant in 2014), plus additional premiums if the plan is underfunded, which is likely considering a percentage of the annual salary of a low-income individual might not meet the PBGC premium level.

Liability

There would also be liability for the state. These liability concerns include liability for a breach of fiduciary duty under ERISA. Because this will be a plan for private sector employers and employees, it will be governed by ERISA, which would entail:

- Liability for failure to file the necessary IRS forms and accounting mistakes,
- Liability for any complications of dealing with 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.

The state would also be liable for any guaranteed benefits under the plan.

Challenges Combining Employees in One Joint Plan

Under the proposal it is unclear whether this would be one plan or multiple plans. If the state attempts to pool the assets, then it would lose its tax benefit as an IRA with co-mingled assets, which cannot be done under Section 408(a)(5) of the Internal Revenue Code unless it is a common investment fund or a bank collective trust. A state-administered retirement savings trust is neither.

If this is an attempt to create a multi-employer plan, then it is clear from two recent Department of Labor advisory opinions that in the absence of an employment based common nexus or other genuine organizational relationship, the DOL does not view the sponsor of a plan of unrelated employers as an employer capable of sponsoring a "multiple employer" plan. (DOL Advisory Opinions 2012-03A and 2012-04A.)

As such, these plans will be treated as individual plans and each employer would need to have separate audits, in part to ensure that the proper amount of money is deducted from the paychecks and promptly sent to the financial provider, and the annual preparation and filing of Form 5500s. Each employer would have to satisfy the participant notice requirements under ERISA, including the 404(a)(5) notice on fees and expenses chargeable to the plan account. Further, if these are defined benefit plans with promised benefits, then the employer will also need to hire an actuary to determine if the payroll deductions they are sending in adequately covers the promised benefit. Each of these activities has a cost to the state and/or the employer.

Positive Steps Moving Forward

SIFMA would like to work with state policymakers to expand retirement plan coverage. We believe that education about the options that currently exist for small and non-profit employers would help increase coverage. For example, many small employers are not aware that the federal government provides for a $500 per year tax credit for three years if a business starts a new plan. In addition, there are educational programs at the federal level about the benefits of offering a retirement plan to employees that could be replicated on the state level. This could entail partnerships between small employer groups, various providers and schools or civic meetings. SIFMA would be happy to work with the state on such efforts.

Thank you for your consideration.