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March 8, 2016

The Honorable Edwin A. Gomes
The Honorable Peter A. Tercyak
Labor and Public Employees Committee
Legislative Office Building
Room 3800
Hartford, CT 06106-1591

**RE: H.B. 5591, An Act Creating the Connecticut Retirement Savings Program**

Dear Chairs Gomes and Tercyak:

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 Connecticut, 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. 5591, An Act Creating the Connecticut Retirement Savings Program. We commend the Connecticut Retirement Savings Board (CRSB) for its commitment to improving retirement savings and for the many hours it has spent examining the issue. 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 with the Board's conclusion that a state run retirement savings plan for private sector workers is an appropriate solution.

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

- **Access to Retirement Savings**. The market for retirement savings products in Connecticut is robust and highly competitive. Indeed, there are over 25,000 individuals in the state working in the securities industry and over 111,000 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.

  We believe that lack of access is not the primary reason behind workers' low retirement savings. The Connecticut Employee Enrollment Experiment does not appear to have asked uncovered workers if they were saving for retirement even without an employer sponsored plan. That might have been useful data. Rather, the Experiment gave uncovered workers a base hypothetical scenario and asked them whether they would opt-out from contributing.

[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.

California's recently released study did ask uncovered workers whether they were saving for retirement outside of the workplace. On page 27 of the "Online Survey of Employees Without Workplace Retirement Plans," it quantified that 71% of uncovered workers are in fact already saving for retirement. In fact, while the average retirement savings rate for these workers was 4.5% of household income, 26% reported saving between 5 and 9% of household income and 10% reported saving an impressive 19% or more. In addition, the California survey found that 14% of respondents strongly agreed with the statement "It is hopeless for me to save anything" making these people unlikely to contribute.

If these numbers are also true in Connecticut, then it is possible that a state run program would not be filling a coverage gap for most "uncovered" workers. It would instead be simply adding a new savings vehicle at substantial cost and potential liability to an already robust market.

- **Underlying Obstacles to Saving**. We also believe that an important question to ask uncovered workers is what other factors are keeping them from either saving at all or saving as much as they might like? Was this question asked and answered in Connecticut?

  Again, the California Online Survey may shed some light on this issue. Survey results concluded, "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. Further, a 2015 survey conducted by AARP in New York City found that, "No money left after paying bills" was the number one obstacle to retirement savings. It is not clear how a state run plan would change this dynamic. We would encourage the Board to further explore these underlying obstacles before creating a new retirement structure that may not address the real problem.

- **Uncertain Regulatory Environment and the Proposed Safe Harbor**. 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 would provide states with a limited safe harbor from ERISA. Sixty-seven entities commented on the rule, including the CRSB. We would encourage you to wait for DOL's final rule before moving forward with any legislation. Indeed, H.B. 5591, as currently drafted, would not appear to satisfy the safe harbor requirements. For example:

  - Under DOL's proposed rule, the employer's participation in the program must be required by State law.

    - Yet under Section 7(b) of H.B. 5591, an employer "that does not otherwise meet the definition of a qualified employer may make the program available to its employees." (Emphasis added)

    - The CRSB, the California Secure Choice Retirement Savings Investment Board and others have asked DOL to change this interpretation. In the words of the California Board, without this change, 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."
  - The CRSB has expressed concern that this language could prohibit states "from delegating legal responsibility for program investments and/or administration."
  - The CRSB has also suggested this language could make states "a guarantor of the fidelity of third party providers and employers" and that "any such risk has the potential to derail establishment of the programs being contemplated."
- Under DOL's proposed rule, the state has to assume "responsibility for the security of payroll deductions and employee savings."
  - In its letter to DOL, the CRSB stated, "states may be concerned about the meaning of this requirement and the potential for indirectly guaranteeing the fidelity of providers and employers."
  - The CRSB further noted that "the Connecticut legislature required that the payroll deduction savings program not result in the state incurring debts or liabilities. Would "responsibility" for security of payroll deductions and employee savings imply liability to the state?"
- 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." The CRSB would like clarification that employers will do the notification and that this employer function is not enough to trigger ERISA applicability.
- 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." The CRSB is urging that the proposed rule be amended to provide for reasonable withdrawal limitations, expressing concern that without such limitations, the state's flexibility to offer beneficial investment options may be limited and administrative costs borne by participants may increase.

The existence of an effective safe harbor is critical to the proposed legislation. The Connecticut legislature recognized the need for an ERISA exemption when SB 249 was adopted in 2014, stating, "Prior to the implementation of any plan, trust, administrative arrangement or investment offering under the provisions of sections 2 to 15, inclusive, of this act, . . . the public retirement plan shall be determined not to be an employee benefit plan under the federal Employee Retirement Income Security Act." We would encourage the legislature to wait for the final DOL rule before moving forward.

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. 5591 will encourage Connecticut 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.

  The Center for Retirement Research conducted an Employer Phone Survey for the Connecticut Retirement Security Board and found that only 1% of surveyed employers said they would stop offering their current retirement savings plan in favor of the state sponsored plan. We think this characterization dramatically understates the issue for several reasons.

  - First, 43.9% said they would need more information to make the decision. This is not anywhere close to a definitive "we will not switch to the state sponsored plan." If even a small percentage of these employers switch, the results could be devastating to the overall savings rate.

  - Second, the survey as described does not appear to have asked if employers' answers would be different if they were required to offer their part-time employees access to the state sponsored plan. H.B. 5591 would require employers with existing plans to enroll their uncovered part-time employees in the state sponsored plan. Ease of administration and lower costs may result in these employers converting everyone to the state sponsored plan, with their lower permissible contribution levels and no employer matching funds.

- **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. Did the Board consider this program before developing a new state alternative, and if not, why not?

- **Financial Sustainability**– We continue to work to analyze and digest the financial sustainability analysis. We appreciate that a lot of time and effort was put into the final product. We would like to take the appropriate amount of time to fully understand and digest it. We, however, do question whether a 6% default contribution rate is sustainable and whether $1 billion in assets by the end of year 2 is possible, unless employers are switching to the state sponsored plan.

- **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.

In short, there is a retirement savings problem in Connecticut, 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. Please do not hesitate to contact me at 212-313-1311 or SIFMA's lobbyist Pat McCabe at 860-293-2581 with any questions.

Sincerely,

Kim Chamberlain

Kim Chamberlain
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State Government Affairs