

VIA ELECTRONIC MAIL

September 6, 2016

The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: S.B. 1234, California Secure Choice Retirement Saving Program – Veto Request

Dear Governor Brown:

The Financial Services Institute (FSI)¹ and the Securities Industry and Financial Markets Association (SIFMA)² applaud California for its proactive interest in increasing retirement security for its residents. On behalf of our organizations' two memberships, representing hundreds of broker-dealer firms doing business in California, we strongly support efforts to promote retirement security for all workers. We, however, believe that the state and its private sector workers would be better served by leveraging the private savings options currently available rather than taking on the risks and limitations associated with a state run plan.

In response to the passage of S.B. 1234, we raise the following issues for your consideration as you decide whether to approve or veto this legislation:

Reliable Products Already Exist

The financial services industry already provides numerous, fairly priced and easily accessible retirement savings options. Where an employer does not provide a plan, IRAs are readily available on-line and at most financial institutions. In addition, the U.S. Department of Treasury launched a new federal retirement savings program called myRA in late 2015. This program is described as a no cost, no fees payroll deduction savings program which is portable, has Roth IRA tax advantages, and is backed by the U.S. government. S.B. 1234 requires the California Secure Choice Retirement Savings Investment Board to invest in myRAs or similar investments for up to three years following implementation. We are convinced that robust financial literacy education and a targeted myRA education effort would substantially improve retirement savings without the substantial costs and risk of liability of a state run plan.

Cost

The fiscal note for S.B. 1234 states that the legislation has an "unknown fiscal impact." This is concerning. The fiscal note also states that "While the Secure Choice Program is likely to eventually operate without the need for state funds, S.B. 1234 states that initial startup costs over a multi-year

¹ The Financial Services Institute (FSI) is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has successfully promoted a more responsible regulatory environment for more than 100 independent financial services firm members and their 160,000+ affiliated financial advisors – which comprise over 60% of all producing registered representatives. We effect change through involvement in FINRA governance as well as constructive engagement in the regulatory and legislative processes, working to create a healthier regulatory environment for our members so they can provide affordable, objective advice to hard-working Main Street Americans. For more information, please visit financialservices.org.

² 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>.

period could reach up to \$134 million.” We would 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 was fully funded for only \$526,000.

State Liability

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). As you may know, the Department of Labor recently issued a final rule that provides states with a limited safe harbor from ERISA requirements.

S.B. 1234 as passed by the legislature does require the Board to affirm to the Governor and the Legislature that the program is structured to meet the DOL safe harbor before opening the program for enrollment. This is a positive development. That said, the Board proposed many changes to the draft DOL rule, some of which were not incorporated into the final version. This could require significant changes to the program as envisioned.

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.”

Leakage from Existing Plans

In addition to limiting the growth of stronger workplace retirement savings options such as 401k(s), a state-run plan could also encourage employers with strong existing plans to drop them in favor of the state alternative. This would be counterproductive, particularly since the state alternative is subject to lower contribution levels and no matching funds. The loss of an employer match is particularly concerning, as a match is provided by roughly 9 out of 10 employers³ who offer a workplace retirement plan, and the most common match is a dollar-for-dollar match⁴ that can effectively double a worker’s savings rate.

The problem could be exacerbated if employers with existing plans are required to provide their part-time workers with access to the state run plan. They may choose to go with the state plan for all employees rather than administer two different retirement savings options.

FSI and SIFMA believe that the goal to promote and increase access to retirement savings for all Americans can be achieved by the following:

Alternative Plans

We support a voluntary, public-private marketplace plan, similar to that enacted by Washington State and New Jersey. Such a plan provides small employers and their employees with greater, streamlined access to state-vetted 401(k)s and other retirement plans, and positions the state to engage in financial literacy education and outreach. Moreover, this state program enhances retirement savings using existing private sector options while incurring substantially lower state costs and little risk of liability.

Promoting Financial Literacy

Both of our memberships are strong believers in the efficacy and importance of financial literacy. The state and its private sector workers would be well served by increasing financial and retirement

³ See WorldatWork and American Benefits Institute, “Trends in 401(k) Plans and Retirement Rewards, March 2013 at p. 11.

⁴ See Society for Human Resource Management, “Dollar for Dollar is Now Most Common 401(k) Match,” October 30, 2015.

literacy education. Both of our memberships are always willing to serve as a resource for such programming.

Again, we thank you for your consideration and we hope that you will make a well-informed decision to veto S.B. 1234.

Respectfully submitted,



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cc: Michael Martinez, Office of the Governor
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