sifma®
Invested in America

October 20, 2017

The Honorable Tomás E. Salazar
Chair, Investments & Pensions Oversight Committee
State Capitol, Room 322
Sante Fe, New Mexico 87501

RE: Retirement Savings in New Mexico

Dear Chair Salazar,

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 New Mexico, where they provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.

SIFMA strongly agrees with the Committee on the need for increased retirement savings. We are facing a retirement savings shortfall in this country that extends beyond the widespread underfunding of pension systems and poses serious challenges for both individuals and governmental entities. As a result, some states (California, Connecticut, Illinois, Maryland, and Oregon – as well as Washington State, New Jersey and Massachusetts) have initiated efforts to try to address this shortfall.

Some states (Oregon, California, Connecticut, Illinois and Maryland) have enacted laws to establish state-run auto-IRAs for private sector workers. None are fully operational, although Oregon is starting the employer certification process. While we support the goal, we do not believe that state-run plans are the appropriate solution. Some of our concerns with such plans are outlined below.

Conversely, Washington State and New Jersey have pursued a public-private marketplace solution. Their laws authorize the creation of a voluntary small business retirement plan "marketplace," which contains strong investor education components and connects private sector employers with qualifying plan vendors. These marketplaces are also not yet operational, although Washington State is reportedly close to implementation. SIFMA supports this alternative, which was featured in the U.S. Department of Labor's November 2015 interpretive bulletin 2015-02 (addressing possible state roles in retirement savings solutions).

---

[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.

This issue is a complex one. For this reason, SIFMA applauds the passage of SJM 12 earlier this year, which requests that the Treasurer create a task force to study the issue. SIFMA strongly encourages you to wait until this study is completed before taking any concrete action.

Additionally, we urge both the Task Force and the Legislature to take the following considerations into account as you weigh your options:

- **State-Run Auto-IRAs are Unnecessarily Duplicative.** The market for retirement savings products in New Mexico is robust and highly competitive. Indeed, there are nearly 2,000 direct investment services workers in the state of New Mexico, and over 23,500 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. A marketplace program would harness this robust private sector and connect businesses and savers with plans for their specific needs and goals.

- **A State-Run Auto-IRA Fails to Address the 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 undersaving, including, for example, competing financial needs and a lack of understanding about the importance of saving over time. If, as an AARP study[2] indicates, "no money left after paying bills" is one of the leading reasons workers aren't saving, then a state-run program doesn't address this issue. The State's ongoing study should help identify residents' obstacles to saving. With this information, legislators will be better able to craft a solution.

- **State-Run Auto-IRAs are High-Cost.** States have estimated that the start-up costs or up-front financing costs of a state-run auto-IRA can range anywhere from $8 million to over $170 million dollars, depending on the type of plan and the size of the state. That does not even account for the full budget impact of these proposals. For instance, should the state choose to run a traditional IRA, most contributions would be pre-tax, effectively shrinking the state's tax base. Conversely, the marketplace start-up costs in Washington State were roughly $500k.

- **State-Run Auto-IRAs have Liability and Litigation Risks.** There are several liability and litigation risks with state-run plans. First, 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." Such requirements increase an entity's costs and liabilities but also provide substantial investor protection.

[2] AARP, "High Anxiety: New York Gen X and Boomers Struggle with Stress, Savings and Security," 2015, pg. 16. Available at: https://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2015/2015-NY-Survey-GenX-Boomer-Voters-res-gen.pdf.

To help facilitate the creation of state-run plans, the U.S. Department of Labor 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 such plans will be subject to the full range of federal requirements. They, for example, may face penalties in administrative actions or may be civilly liable for violating federal law, including failing to comply with document production deadlines, investment-related requirements and other obligations. States may also be subject to other litigation challenges. For example, a lawsuit was recently filed in Oregon alleging that its state-run auto-IRA represents an overreach of the state's authority.[3]

Conversely, under a marketplace program, because the state is merely acting as an educator and facilitator, it would face minimal to no liability while ensuring participating New Mexicans receive full, robust consumer protections.

- **A One-Size-Fits-All State-Run Auto-IRA Could Cause Significant Financial Harm to Many New Mexicans.** Each of the authorized state-run auto-IRA programs contains an auto-enroll component, but none of them have addressed IRA eligibility issues – which is potentially dangerous for many workers. Eligibility issues can be highly complex, and large numbers of workers can be ineligible to either contribute to an IRA or to deduct contributions. Moreover, there are many reasons 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 tens of thousands of New Mexicans, through no fault of their own, could find themselves in one of two harmful situations:

    1. Liable to the IRS for significant penalties. If, for example, a state creates a Roth auto-IRA program, a married couple who contributes to the state-run plan but files taxes separately could owe significant penalties on their contributions.

    2. Invested in one of the worst-possible retirement savings vehicles. For example, a married couple filing separately who uses the state-run plan to enroll in a traditional IRA could be ineligible for the tax deduction and penalized if they attempt to take it. Even if they don't attempt to deduct those contributions, their savings would go into a retirement account that provides them little if any benefits, as even a standard non-retirement account would offer lower tax rates when the money is ultimately withdrawn.

    On top of potentially causing significant negative tax consequences for thousands of New Mexicans, a state-run auto-IRA could also promote poor savings practices. As previously described, "no money left after paying bills" is one of the leading reasons workers are not saving for retirement. For these workers, an emergency savings account takes precedence over retirement savings. A state-run plan would encourage them to place what money they can save in an account that they would not be able to access for decades without possibly paying significant penalties, which can lead to incurring consumer debt at high interest rates.

- **A State-Run Plan Could Encourage Employers with Strong Retirement Plans to Re-evaluate, Thereby Lowering Overall Retirement Saving**. We are also very concerned that a state-run plan will encourage employers with strong existing plans to drop their current plan in favor of the state alternative. Employers often contribute up to 6% of an

---

[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.

employee's gross salary directly to his or her retirement account. A state-run auto-IRA typically forbids employers from contributing to their employee's account for ERISA reasons. A state-run plan could curb the use of employer contributions if employers with strong retirement savings plans move to the state-run plan for ease of compliance, lower costs or because they place trust in the state – ultimately leading to lower account balances.

In short, we believe there are a variety of available options within the private sector to strengthen the retirement savings market in New Mexico. We appreciate your willingness to consider our concerns. Please do not hesitate to contact me at 212-313-1311 or kchamberlain@sifma.org with any questions.

Sincerely,

Kim Chamberlain
Managing Director & Associate
General Counsel
SIFMA