Attachment E

June 9, 2020

The Honorable Chris Kennedy
The Honorable Sonya Jaquez Lewis
House State Veterans and Military Affairs Committee
Colorado General Assembly
200 E Colfax Avenue
Denver, CO 80203

RE: SB 200 – Concerning the implementation of the Colorado secure savings program to increase the amount of retirement saving by Colorado's private sector workers.

Dear Chair Kennedy, Vice-Chair Jaquez Lewis, and Members of the Committee:

The Securities Industry and Financial Markets Association[1] is a national trade association which brings together the shared interests of more than 350 broker-dealers, banks and asset managers. Many of our members have a strong presence in Colorado where they provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.

SIFMA appreciates the opportunity to provide feedback on SB 200, legislation which seeks to establish a state-run auto-IRA for private sector workers. We commend the bill sponsors for their commitment to improving retirement savings, and we agree that there is a retirement savings challenge in this country. However, we do not believe a mandatory-on-employer state-run auto-IRA for private sector workers is the best solution for Coloradans. This proposal would not address the underlying obstacles to savings faced by most workers, could place many savers into non-ideal or even detrimental savings vehicles, relies heavily on a report that highlights the OregonSaves plan and does not address the recently enacted federal SECURE Act, which represents a significant change in federal retirement laws.

As you consider how to best increase retirement savings, we urge you to consider the following:

- **Current Access to Retirement Savings**. The market for retirement savings products in Colorado is robust and highly competitive and has seen notable growth in recent years. More than 115,000 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. Where an employer does not provide a plan, IRAs are readily available on-line and at most financial institutions. We believe lack of access to retirement savings products is not the problem.

[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. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

- **Factors, Other Than Access, are Creating Underlying Obstacles to Savings**. With a variety of options already available, factors other than access are keeping people from saving. It is important that any state proposal address some of the underlying issues with retirement under-saving, including, for example, 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 study by the California Secure Choice Retirement Savings Investment Board (the "Online Survey of Employees Without Workplace Retirement Plans") 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.

- **The OregonSaves Plan has Failed to Meet Initial Expectations.** In support of the conclusion that a state-run Auto-IRA may be the best solution for Colorado, the Colorado Secure Savings Plan Board ("CSSPB") referenced the success of OregonSaves on several occasions. Yet, the early results from Oregon fall significantly short of initial expectations:

    - Low Participation Rate. OregonSaves' initial feasibility study estimated a participation rate between 75 and 80%.[2] The CSSPB's study reports that OregonSaves documented a 70% participation rate.[3] However, studies by the Center for Retirement Research at Boston College (which advised the CSSPB on their study) found that participation rates were more likely around 48%. The first 2018 study by Boston College found that – in addition to those employees opting out of the program – many employees set their contribution level to $0 either before or shortly after contributing for the first time.[4] The 2019 study found that only 48% of eligible workers had an open, positive balance in their accounts.[5]

    - Smaller-than-Expected Participant Pool. The same 2019 study found that, out of roughly 200,000 "eligible employees," there were only about 82,000 "active employees" – employees who were both eligible to contribute to the plan and worked for employers able to facilitate payroll deductions.[6] This means that, while Oregon initially anticipated roughly 160,000 workers would contribute to IRAs through the plan, only about 40,000 are actively doing so.[7] The initial Oregon feasibility study estimated 349,000 active accounts in year 3 – 10x more than are currently enrolled after the program launched in July 2017.[8]

    - Low Contribution Levels and High Leakage Rates. The CSSPB outlined an annual savings target of $1,200 per participant. $1,200 was identified as level of savings that would notably "increase retirement savings in the state and improve the state's fiscal outlook."[9] Although it appears that the average savings rate in OregonSaves is about $1,200 per year, that does not take into account the high leakage rate – a leakage rate that is likely exacerbated by directing individuals without emergency savings accounts into retirement accounts first. 32% of participants made withdrawals over the one year that was evaluated

[2] Oregon Retirement Savings Board Feasibility Report, pg. 20.
[3] CSSPB Report, pg. 4.
[4] Center for Retirement Research at Boston College, "How Have Workers Responded to Oregon's Auto-IRA?" at pg. 4.
[5] Center for Retirement Research at Boston College, "Participation and Leakages in Oregon's Auto-IRA," at pg. 5.
[6] Ibid.
[7] Ibid. pg. 16.
[8] Feasibility Report, pg. 8.
[9] CSSPB Report, pg. 3.

– including roughly one-fifth of full-year contributors.[10] The average withdrawal was $1,000 and the average funded account balance by the end of 2018 was about $630.[11]

Taken all together, the OregonSaves program has failed to live up to its initial expectations and is so short of its original goal of helping 500,000 Oregonians build meaningful retirement savings it is fair to wonder when – if ever – the plan could get there. This is more evidence that there are significant factors other than access that are actively limiting workers ability to save for retirement, and that a state-run auto-IRA does not sufficiently address those factors. Other possible programs (such as programs that allow for employer matching of contributions) would directly address those factors.

- **More Possible Solutions Exist After Enactment of the Federal SECURE Act.** There are a wide variety of potential programs that could help address the underlying causes of the retirement savings crisis – many of which could be combined to create a more effective solution. For instance, additional education efforts, tax breaks and the establishment of emergency savings accounts, when taken together, would create a package of proposals that would directly address the causes of under-saving while avoiding some of the pitfalls outlined above.

  Additionally, the SECURE Act was signed into law at the end of 2019. This law significantly expands access to employer-sponsored plans, increases the benefits for businesses who provide retirement savings plans and makes multiple employer plans ("MEPs") a strong option. We strongly urge you to consider a proposal that would provide savers with full ERISA protections (discussed below) and allow employers to make matching contributions to their employee's retirement plans – a vital feature of many 401(k)s that is critical to the retirement readiness of many Americans. For instance, it would be worth examining the plan established in Massachusetts for small non-profits, or the MEP authorized by Vermont (and under consideration in other states after the enactment of the SECURE Act).

  Furthermore, while the CSSPB found that a "Marketplace Plan" is not a sole solution to the retirement savings shortfall (there is no sole solution), we urge you to consider establishing a Marketplace as one part of a broader effort. Combined with education efforts, tax breaks and a state-run MEP, it could represent the most aggressive and effective retirement savings solution undertaken by any state. We suggest that you consider reviewing the Washington State Marketplace, which is available at www.retirementmarketplace.com.

- **Potential Harm to Participants.** A state-run plan for private sector workers also poses some risks to participants. ERISA is a vital investor protection law that has been effectively protecting investors since the 1970s. Any discussion must take into consideration the value of the protections afforded by ERISA – particularly to women, children and heirs of deceased account holders and what is potentially lost if a plan seeks to go outside the ERISA umbrella.

  Such a plan would also encourage poor savings habits for participants. Bankrate reported that 60% of people couldn't handle $1000 unexpected expense without borrowing money or going into debt. A study should consider the potential risks of encouraging workers to save for retirement before establishing emergency savings accounts.

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[10] Participation and Leakages in Oregon's Auto-IRA, pg. 2.

[11] Ibid., pg. 16.

A state-run auto-IRA program could also directly lead to fines or penalties for many investors. There are several (often complicated) reasons why someone might be ineligible to contribute to a traditional or ROTH IRA, including having a spouse with access to a workplace plan or being married and filing taxes separately (as many do for student loan repayment purposes). This could mean that too many Coloradans could be penalized by the IRS for contributing to a plan they were automatically enrolled in.

- **Whether Any Proposed Plan Would Encourage Employers with Strong Retirement Plans to Re-evaluate, Thereby Lowering Overall Retirement Saving**. There is great concern over any initiatives that could encourage employers with strong existing plans to drop their current plan in favor of a state alternative. As referenced above, employers often contribute up to 6% of an employee's gross salary directly to his or her retirement account. Any state program could curb the use of employer contributions if employers with strong retirement savings plans move to the program adopted by the state for ease of compliance, lower costs or because they place trust in the state – ultimately leading to lower account balances. In fact, a market feasibility analysis of one proposed state-run plan in Connecticut showed that only 48% of employers with existing plans would not consider moving to a state-sponsored plan.

- **Potential Liabilities for the State.** In addition to the above considerations, there are several liability and litigation risks with SB 200's proposed plan. The federal Employee Retirement Income Security Act of 1974 governs the liability of plan sponsors. 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.

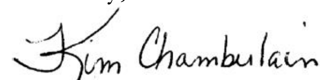
  Separately, states with auto-IRA programs could be faced with civil lawsuits and administrative actions for failing to fully comply with ERISA requirements. While several states have taken the position that state-run auto-IRAs are not covered by ERISA, Congress repealed a DOL rule that would have made such plans exempt from ERISA, and a challenge to the California program has made its way to the Ninth Circuit.

  Other options – such as a MEP or Marketplace Plan (explicitly endorsed by DOL in an Interpretive Bulletin) – do not have such issues. The same would be true for Utah's state tax credit or any education-focused initiatives.

In short, while we applaud you for seeking to address Colorado's retirement crisis, we respectfully suggest you explore a variety of solutions to best address the needs of Colorado residents.

We appreciate your willingness to consider our concerns. If you have any questions, please contact me at kchamberlain@sifma.org or 202-962-7411.

Sincerely,



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