STATEMENT OF THE
SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION
BEFORE THE
NEW YORK CITY COUNCIL COMMITTEE ON CIVIL SERVICE AND LABOR
HEARING ON
INT 0888-2018 AND INT 0901-2018
Thursday, April 29, 2021

On behalf of the Securities Industry and Financial Markets Association (SIFMA),[1] we thank you for the opportunity to provide testimony on Int 0888-2018 which would establish a city-run, mandatory-on-employer, auto-IRA for private sector workers, and Int 0901-2018 which would establish a retirement savings board to implement the city-run auto-IRA created by Int 088-2018. SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers located throughout New York City and across the state. There are 170,900 securities industry jobs in New York City - or about 4.1% of the total employment in New York City.[2] There are approximately 18,300 financial advisors in New York City who provide services to investors and retirement plans, including advisory services, investment opportunities and plan recordkeeping.[3]

SIFMA commends the 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 city-run, mandatory-on-employer, auto-IRA for private sector workers is the best solution for New York City. This proposal would not address the underlying obstacles to savings faced by most workers, and it could place many savers into a savings plan that is not right for them.

As the Committee considers 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 New York City is robust and highly competitive and has seen notable growth in recent years. Many employers are already offering qualified retirement plans to its employees under § 401(k), 403(b) or 457 of the Internal Revenue Code. These employers would not be eligible to enroll in the Savings Access New York Retirement Program. However, where an employer does not provide a plan, low cost IRAs are readily available online and at most financial institutions. We believe lack of access to retirement savings products is not the problem.

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 city 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

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[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. For more information, visit http://www.sifma.org.
[2] NYS Department of Labor
[3] Financial Industry Regulatory Authority, Discovery Data

Board concluded that the leading reasons for not saving more for retirement were 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.

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 below.

Additionally, the SECURE Act was signed into law at the end of 2019.[4] 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") and pooled employer plans ("PEPs") a strong option that may allow businesses to lower the costs and reduce their administrative and fiduciary burden. 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 but not permitted within an IRA.

Since the SECURE Act facilitated the creation of PEPs, and as a result, employers now no longer need to be in related businesses to join a pooled 401(k) plan, where they can benefit from greater economies of scale and potentially lower costs without any barriers to entry. PEPs represent a critical opportunity to expand access to retirement savings plans and provide cost-effective opportunities for individuals to save and invest for their retirement, particularly for those who work for small businesses. The SECURE Act also enables long-term, part-time employees to start saving in a workplace plan. This is a critical improvement and could have a meaningful impact on those workers - who are often part-time workers, women, minorities, and lower- and middle-income individuals.

These improvements are not theoretical; within the first month PEPs were offered, over 1,000 employers enrolled who did not provide any retirement plans before this; employers ranged from startups to established companies.[5] New York City should not take the time and resources to build a whole new infrastructure plan on the city level; we urge you to consider establishing a MEP / PEP as a part of a broader effort to help New Yorkers save for their retirement.

The OregonSaves Plan Has Failed to Meet Initial Expectations. Existing state plans have failed to meet initial expectations. We can look to the implementation of OregonSaves, where results have not met initial expectations:

- OregonSaves' initial feasibility study estimated a participation rate between 75% and 80%.[6] However, studies by the Center for Retirement Research at Boston College found that this figure is much lower. The initial Oregon feasibility study estimated that in year three of OregonSaves, there would be 349,000 participants.[7] However, as of June 30, 2020, there were only 70,000 workers with a funded account, which means that the program has only

[4] H.R. 1994
[5] Correia, Margarida. New PEPs Targeting Firms Without Retirement Plans, 2021.
[6] Oregon Retirement Savings Board Feasibility Report, pg. 20.
[7] Oregon Retirement Savings Board Feasibility Report, pg 7.

20% of anticipated participants.[8] A 2019 study found that – in addition to employees opting out of the program – many employees set their initial contribution level to $0 either before or shortly after contributing for the first time.[9]

- The average account balance at the end of the second quarter of 2020 - which was three years after the program began - was $829.[10] 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. In 2018, 20% of OregonSaves participants made at least one withdrawal – on average of approximately $1,000 from their account.[11] In August 2019, despite having prior balances, there were already 4,578 participants who had cashed out their accounts entirely.[12]

The participation and saving projections made when OregonSaves was enacted have not been realized. This is more evidence that there are significant factors other than access that are actively limiting workers' ability to save for retirement which a city-run auto-IRA will not sufficiently address. Other possible programs - especially programs that allow for employer matching of contributions- could more directly address those factors.

Potential Harm to Participants. A city-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.

A mandatory city-run auto-IRA could also encourage poor savings habits for participants. Bankrate reported that 60% of people couldn't handle a $1000 unexpected expense without borrowing money or going into debt. The Committee should consider the potential risks of encouraging workers to save for retirement before establishing emergency savings accounts which can help prevent workers from going into debt.

A city-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 New York City residents 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 city-run alternative. As referenced above, employers often contribute up to 6% of an employee's gross salary directly to his or her retirement account. Any city-run program could reduce the amount of employer contributions if employers with strong retirement savings plans move to the program instead adopted by the city for ease of compliance, lower costs or because they place trust in the city – ultimately leading to

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8 Center for Retreatment Research at Boston College "Facts About OregonSaves" at pg 1.

9 Center for Retirement Research at Boston College, "How Have Workers Responded to Oregon's Auto-IRA?" at pg. 4.

10 Center for Retreatment Research at Boston College "Facts About OregonSaves" at page 2.

11 Participation and Leakages in Oregon's Auto-IRA, pg. 2.

12 National Association of Plan Advisors, https://www.ntsa-net.org/news-resources/too-early-assess-oregonsaves-program-crr-study-finds

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 City. In addition to the above considerations, there are several liability and litigation risks with Int 0888 and Int 0901's proposed plans. 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, cities and 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.

Preemption by ERISA. The United States Supreme Court has described ERISA as a program to "establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." 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 to provide retirement plans to employees currently without a plan – such as a MEP/PEP or a 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.

Abandoned Retirement Accounts. Implementing Savings Access New York as a mandatory auto-enroll plan could result in a high level of "unclaimed," or abandoned, accounts. In 2016, Americans held an estimated 70,000 unclaimed retirement accounts totaling $38 million, partially due to retirement savings being spread across multiple accounts.[13] A study showed that in Massachusetts, only 3.4% of unclaimed retirement accounts in 2016 were reclaimed.[14] In these circumstances, instead of being used by an individual for retirement, the money flows back to the state, defeating the goal of establishing individual retirement accounts for employees.

New York State Secure Choice Savings Program Recently Funded. In addition, Int 0888 states that New York City will not implement a retirement savings program if New York State establishes a retirement savings program applicable to a substantial portion of the employers who would otherwise be "covered employers" under Int 0888 and Int 0901. In 2018, New York State enacted the NYS Secure Choice Savings Program that created a state-run auto-IRA for private employees - and just this month- the state appropriated $3 million in the FY2022 budget to administer the program.[15] NYC may want to

[13] Corina Mommaerts, Anita Mukherjee, Lost and Found: Claiming Behavior in Abandoned Retirement Accounts, pg. 4-6.
[14] Ibid.
[15] Chapter 50

consider the recent activity on the NYS plan before investing resources to move ahead with a city-run auto-IRA program that may not ultimately be implemented.

NYC businesses are still recovering from COVID-19. This new City-run plan and additional employer mandate would establish a program that is already in development by the State and that would provide low-cost retirement account options already available - today - locally and online.

In short, while we applaud you for seeking to address retirement under-saving of employees in NYC, we respectfully urge you to explore the variety of existing solutions that could address the needs of New York City residents and provide them with a more secure future.

We appreciate your willingness to consider our concerns. If you have any questions, please contact me at nlancia@sifma.org or 212-313-1233.