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The Hon. Kevin Lembo
Comptroller, State of Connecticut
Co-chair, Connecticut Retirement Security Board
55 Elm Street
Hartford, Connecticut 06106
Attn: CRSB Request for Public Comment

By Fedex and email (OSC.CRSB@ct.gov)

Dear Comptroller Lembo:

I write in response to the request of the Connecticut Retirement Security Board for public comment.

By way of background, I am a New Haven resident and the Annie and Morris Trachman Professor of Law at the Benjamin N. Cardozo School of Law of Yeshiva University. I both teach about ERISA and pension matters and write on these subjects. Last year, you and I appeared together on a panel at the University of Connecticut School of Law on retirement issues.

My talk concerned the California Secure Choice Retirement Savings Trust Act. That talk resulted in an article on the California Act which appeared in Volume 20, Number 2 of the Connecticut Insurance Law Journal. I attach a reprint of that article to the hard copy of this comment.

Of the legal issues which I discuss in that article, perhaps the most important for the Board to consider is the tax status of the accounts created under the California Act. As I discuss, the accounts authorized by the California Act will not qualify as individual retirement accounts (IRAs) under the Internal Revenue Code since investment gains and losses are not directly allocated to these accounts.

To qualify as an account for purposes of the Internal Revenue Code, an account must provide a benefit which is based, inter alia, on investment “gains and losses.” 29 U.S.C. § 1002(34) (ERISA), 26 U.S.C.

§ 414(i) (Internal Revenue Code). The California Act instead establishes notional, cash-balance accounts which implement a defined benefit-style formula, namely, contributions augmented by an assumed rate of return unreduced by any losses. Hence, the accounts created by the California Act do not qualify as IRAs because investment gains and losses are not allocated directly to these accounts.

The Commission should thus avoid the design of the California Act. If the Commission decides to recommend a state-sponsored retirement plan, the Commission should avoid the formula-based, cash balance accounts of the California Act and instead recommend true IRAs under which investment gains and losses are directly allocated to each account.

The most efficient way to accomplish this would be for the state to subcontract with one or more established providers of IRAs. Alternatively, the state might mandate employers lacking retirement coverage for their employees to themselves contract with established IRA providers.

In making these legal observations, I assume that the Board will decide that the benefits of a state-sponsored retirement plan for private employers will outweigh its costs, particularly in terms of the burden such a plan would impose on small businesses. In this comment, I do not address this policy question though I note for the record that Connecticut already has a difficult environment for small businesses and any additional mandate placed on such businesses will have real costs in terms of employment and investment.

Instead, I assume in these comments that the Board will recommend that Connecticut proceed with a state-sponsored retirement plan. If so, Connecticut should avoid the design of the California Act and should instead utilize true IRAs which directly allocate gains and losses to the account holder and thus qualify for the tax benefits IRAs receive under the Internal Revenue Code.

Sincerely,

Edward A. Zelinsky