

February 27, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
S-221, The Capitol
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of the Investment Company Institute (ICI),¹ I want to express our strong support for H.J. Res. 66 and H.J. Res. 67, two joint resolutions of disapproval which the House passed on February 15 under the Congressional Review Act procedures. The joint resolutions will disapprove the Department of Labor (DOL) final regulations entitled “Savings Arrangements Established by States for Non-Governmental Employees,” published in the Federal Register on August 30, 2016, and effective October 31, 2016; and “Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees” published in the Federal Register on December 20, 2016, and effective January 19, 2017.²

ICI strongly supports efforts to promote retirement security for all American workers and for decades has promoted innovative improvements to our voluntary private retirement system. Unfortunately, we have serious concerns with the DOL’s regulations, which do away with the protections of federal law for workers and nullify Congress’ longstanding policy of maintaining a uniform set of rules for employers. Moreover, the sweeping change in retirement policy promoted by these regulations—with its attendant risks and burdens—cannot be justified by any clear and demonstrated benefit.

¹ The Investment Company Institute (ICI) is a leading global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI’s members manage total assets of US\$18.6 trillion in the United States, serving more than 95 million US shareholders, and US\$1.6 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

² 81 FR 59464 (August 30, 2016); 81 FR 92639 (December 20, 2016).

These rules enable a new mandate on business we do not need. The sole purpose of the rules is to overturn longstanding precedent so that states and political subdivisions like cities can impose a new employee benefit mandate on job-creating businesses. Congress has a unique opportunity to prevent, through a resolution of disapproval, a new mandate rushed through the regulatory process.

These rules allow states and cities to impose unnecessary burdens on small and large businesses. The rules allow states and cities to do what Congress has rejected—impose new burdens on employers and other job creators where voluntary private savings solutions are widely available. The rules will result in overlapping and inconsistent requirements for employers operating in multiple jurisdictions, even within a state, in total disregard of ERISA’s long standing preemption doctrine. DOL did not fully consider the costs of these new burdens.

DOL has compounded the problem created in the first regulation by allowing cities to create mandatory savings programs. In the second rulemaking, DOL is allowing cities and other large political subdivisions to mandate that employers implement a savings program. By DOL’s own assessment, this means employers may need to contend with more than 100 jurisdictions with overlapping and conflicting mandates.

The rules allow states and cities to avoid providing important consumer protections for worker’s hard-earned savings. DOL has given states and cities a “pass” on the fiduciary oversight and other protections of ERISA that ensure that workers’ savings are available to provide a secure retirement.

The rules will result in distracting litigation. DOL acknowledged in the proposal that these rules could be subject to challenge in federal court on ERISA preemption grounds. This is a distraction we cannot afford, especially when bipartisan solutions to increase retirement coverage exist, such as the open multiple employer plan proposal that passed unanimously through the Senate Finance Committee in the 114th Congress as part of the Retirement Enhancement and Savings Act.

Congressional disapproval of the rules would not prevent states and cities from offering innovative voluntary solutions to increase retirement savings. Rather, Congress’ action to disapprove the rules would simply ensure that savers are fully protected from misuse of their savings by state and local officials and that states and cities act on a level playing field with private businesses.

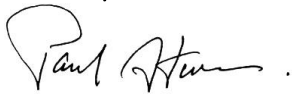
DOL’s assessment that these are not major regulations is misguided. We are at a loss as to why DOL categorized these rules as not “major,” allowing them to be issued without an adequate impact analysis. Indeed, the rules have the potential to harm the successful private voluntary system of retirement savings that is working to help millions of American workers achieve retirement security. In any event, the CRA allows Congress to overturn any regulation, even one the regulator concludes is not “major.” Because the first rule was sent to Congress on August 30, 2016 and the second on

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December 20, 2016—well within the “reset” period under the CRA—there is no doubt that the 115th Congress has the right to review and overturn the regulations.

Again, we appreciate your consideration of this critical issue and urge the Senate to approve the House-passed joint resolutions of disapproval of DOL’s state- and city-run savings arrangements rules. We stand ready to help in any way we can, and look forward to working with you and the administration to improve on our successful voluntary private retirement savings system.

Sincerely,

A handwritten signature in black ink that reads "Paul Schott Stevens". The signature is written in a cursive, flowing style.

Paul Schott Stevens
President & CEO
Investment Company Institute

cc: All Members of the US Senate