

December 20, 2016

The Honorable Paul Ryan
Speaker
United States House of Representatives
H-232, The Capitol
Washington, DC 20515

Dear Speaker Ryan:

On behalf of the Investment Company Institute (ICI),¹ I urge you to move forward under the Congressional Review Act on a joint resolution of disapproval of the Department of Labor (DOL) final regulation entitled “Savings Arrangements Established by States for Non-Governmental Employees,” published in the Federal Register on August 30, 2016, and effective October 31, 2016.²

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 regulation, which does away with the protections of federal law for workers and nullifies Congress’ longstanding policy of maintaining a uniform set of rules for employers. Moreover, the sweeping change in retirement policy promoted by this regulation—with its attendant risks and burdens—cannot be justified by any clear and demonstrated benefit.

As you and your fellow members of Congress examine which “midnight” Obama regulations deserve floor time under the Congressional Review Act, we urge you to look seriously at this rule.

This rule enables a new mandate on business we do not need. The sole purpose of the rule is to overturn longstanding precedent so that states can impose a new employee benefit mandate on job-

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\$18.2 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).

creating businesses. Congress has a unique opportunity to prevent, through a resolution of disapproval, a new mandate rushed through the regulatory process.

This rule allows states to impose unnecessary burdens on small and large businesses. The rule allows states to do what Congress has rejected—impose new burdens on employers and other job creators where voluntary private savings solutions are widely available. The rule 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 by allowing cities and counties to create mandatory savings programs. In a follow-up second rulemaking, DOL is allowing cities and counties 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 rule allows states 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 rule will result in distracting litigation. DOL acknowledged in the proposal that its rule 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 passed unanimously through the Senate Finance Committee on September 21 as part of the Retirement Enhancement and Savings Act.

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

DOL’s assessment that this is not a major regulation is misguided. We are at a loss as to why DOL categorized this rule as not “major,” allowing it to be issued without an adequate impact analysis. Indeed, the rule has 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 rule was sent to Congress on August 30, 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 regulation.

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Again, we urge you to put before the House a joint resolution of disapproval of DOL's state-run savings arrangements rule, and we appreciate your consideration of this critical issue. We stand ready to help in any way we can, and look forward to working with you, your colleagues in the 115th Congress, and the incoming administration to improve on our successful voluntary private retirement savings system.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Schott Stevens". The signature is fluid and cursive, with a period at the end.

Paul Schott Stevens
President & CEO
Investment Company Institute