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H.J. Res. 66 and H.J. Res. 67 will ensure Retirement Saver Protection
AARP's Claims vs. Reality

This document addresses some of the claims made in AARP's recent letter to Congress regarding the Congressional Review Act resolutions to overturn the Department of Labor's final rules exempting from ERISA state- and city-run retirement plans for workers in the private sector.

#1 Claim: AARP suggests a vote against a Congressional Review Act (CRA) resolution to overturn the Department of Labor's final rule on "Savings Arrangements Established by States for Non-Governmental Employees," will help working Americans who struggle to save for their retirement.
#1 Reality: A vote for the CRA resolution *will actually protect* Americans saving for retirement. Americans who are struggling to save for retirement will not be helped by a mandated default that takes their hard-earned money from current paychecks and places it into a high-cost or low-return state-run plan that does not contain the same participant protections as private-sector plans and that by design will limit investment options and subject defaulted workers to high anticipated start-up costs. In this respect, as an example, money from defaulted workers in the California Secure Choice program initially will be invested in government securities and analysis of the Oregon Retirement Savings Plan by the Center for Retirement Research at Boston College assumes that the plan will need to charge defaulted workers fees in excess of operating costs in order to recoup start-up costs incurred by the plan (http://crr.bc.edu/wp-content/uploads/2016/12/IB_16-19.pdf).

#2 Claim: AARP claims that a CRA resolution to overturn the DOL rulemaking is "sending the political message that state flexibility is not a priority."
#2 Reality: A CRA resolution to overturn this rulemaking will simply end an ill-advised exemption from ERISA, sending the message that private-sector participants in any retirement plan, no matter the sponsor, are entitled to the same protections afforded current private-sector retirement plan participants by ERISA.

#3 Claim: AARP states that Congress should support these important state savings programs, not take steps to end them.
#3 Reality: The CRA resolution is not about ending these programs, it is about making sure that participants in these programs enjoy the same protections private-sector plan participants currently have. Congress should not allow these plans to evade the protections of ERISA.

#4 Claim: AARP cites the advantage of states "remov[ing] regulatory and operational barriers" in response to "the stubborn lack of growth in employer-sponsored retirement savings plans" to offer retirement savings plans to private-sector workers.

#4 Reality: It is this very concern—the concern about the removal of regulatory barriers (i.e., the protections of ERISA)—that the CRA resolution is designed to address. ERISA is designed to protect plan participants—the notion that state or local government sponsors should not be held to those standards ignores the history of misappropriation of monies in their control, as well as their questionable track record managing the retirement plans for their own employees (state and local government retirement plans need at least an additional $3 trillion to cover their promises to future retirees; https://web.stanford.edu/~rauh/research/UnfundedDebts.pdf). In enacting ERISA, Congress did not intend to allow states to maintain retirement plans for private-sector workers without being subject to ERISA – in fact, it is well-established law that participation by some private-sector workers in a governmental plan will cause the plan to lose its governmental plan status and become subject to ERISA. The Department of Labor's rule is an end-run around the framework of ERISA.

With regard to operational barriers, the feasibility analyses for these plans indicate that the operational costs are shifting to the state, the plan participants, and state taxpayers, while forcing employers to act as conduits between their employees and the plan. However, even by the states' own analyses, it will be several years before the plans are projected to be able to cover operating costs, recoup start-up costs, and be self-sustaining. In the meantime, defaulted workers will bear these costs.

#5 Claim: AARP argues that "[d]espite decades of federal incentives, employer sponsorship of retirement savings plans has remained static."
#5 Reality: This claim is readily disputed by the facts—the US retirement system has experienced robust growth. For example, more than 60 million private-sector defined contribution (DC) plan participants in more than 640,000 plans have accumulated more than $5.3 trillion in assets (https://www.dol.gov/sites/default/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf and www.ici.org/info/ret_16_q3_data.xls). More than 57 million IRA-owning taxpayers have accumulated $7.8 trillion in assets. In total, US retirement assets—including private and public defined benefit (DB) plans, DC plans, and IRAs—are more than $25.0 trillion in September 2016, compared with $7.8 trillion two decades ago, and $2.6 trillion three decades ago. Average assets set aside for retirement were almost seven times higher in September 2016 than they were in 1975, after adjusting for inflation and population growth.

#6 Claim: AARP claims that "[t]he lack of options to save for retirement at work is a persistent problem that demands action today;" that "Americans need easy savings options;" and that "Congress should not curtail state efforts to promote retirement savings."
#6 Reality: Creating a patchwork of different mandatory high-cost, limited-investment option, state-run plans that minimize the role of the employer and leave participants without the same protections afforded by ERISA is not something that American workers need. Americans have numerous options to save for retirement. In addition, innovation over time has made saving for retirement even easier—tiered educational materials, "easy enrollment," auto-enrollment, target date funds, to name a few.

#7 Claim: AARP claims that "[t]oday, 55 million working Americans do not have a way to save for retirement out of their regular paycheck."
#7 Reality: AARP's claim is inaccurate and misleading. No doubt AARP is referring to the number of private-sector workers whose current employers do not offer retirement plans, which is a different proposition than having "no way to save for retirement out of their regular paycheck." All workers can set up an IRA for themselves or their spouses and make contributions on a regular basis. In fact, more than 57 million US taxpayers already have IRAs (www.irs.gov/pub/irs-soi/14in01ira.xls).

The "coverage gap" is overstated by the most commonly used measure to determine the share of private-sector workers whose current employers do not offer workplace retirement plans, the Current Population Survey (CPS) (https://www.ebri.org/pdf/notespdf/EBRI_Notes_12_Dec15_CPS.pdf). The CPS data historically have found that about half of private-sector workers don't have retirement plans at work. On the other hand, the National Compensation Survey (NCS) finds that about one-third of private-sector workers are not offered retirement plans at work.

Regardless of the empirical measure, such a snapshot of current coverage across all private-sector workers of all ages ignores the lifecycle of saving, the role of income, and the role of work-status (e.g., full-time, part-time, full-year, part-year). The typical workers that will be automatically enrolled in a mandatory state-run plan are younger, lower-income, and less likely to be full-time, which means that these workers may be focused on other savings goals, will get high replacement rates from Social Security, and likely currently face other more pressing financial needs than saving more for retirement.

Finally, it is important to remember that virtually all private-sector workers are covered by Social Security, which means 12.4 percent of their earnings (up to the earnings cap) is collected and paid into Social Security. To ignore Social Security is to ignore a key component of Americans' retirement resources.

#8 Claim: AARP characterizes the state-run retirement programs blessed by DOL as "public-private partnerships" and asserts that these programs are for small businesses who "want" to offer a retirement savings vehicle to their workers.
#8 Reality: These programs are mandates on small businesses to utilize a new government product whether they "want" to or not.

#9 Claim: AARP suggests that 529 plans are an example of a "successful precedent for states to take action to promote personal financial responsibility."
#9 Reality: 529 plans represent a completely different scenario – they are not mandated and don't automatically default individuals into participation. In contrast to workers who are likely to be defaulted into a state-run retirement plan, savers in 529 plans tend to have higher incomes and have

voluntarily engaged in college saving. In addition, in many instances the sponsoring state provides additional tax advantages to state residents participating in their state's program (http://www.collegesavings.org/plan-advantages/). Finally, the investments offered in 529 plans are regulated investment products offered by financial services firms; and most states include a low-cost direct-sold option, while many states also offer an adviser-sold option.

AARP highlights the growth in 529 plan assets from less than $2.5 billion 20 years ago to more than $253.2 billion today (an increase of more than $250 billion). The current US retirement system has more than $25 trillion in assets, an increase of more than $17 trillion from 20 years ago (see #5 Reality).

#10 Claim: AARP claims that the states are acting as facilitators, aggregating small businesses to get the cost benefit of pooling.
#10 Reality: Starting from scratch to mandate automatic enrollment, build new recordkeeping systems, and create complicated investment plans to spread costs from one cohort of investors to another to cover start-up costs all combine to suggest that these plans will not be facilitators of the cost benefit of pooling. Workers have access to pooled investments through IRAs; and IRA investors in mutual funds typically enjoy lower fees than the scenarios projected for these state plans (e.g., California and Oregon). The states' forecasts are overly optimistic; another example of automatic enrollment, the UK NEST program, costs 12.5 percent of assets to run (https://www.nestpensions.org.uk/schemeweb/NestWeb/includes/public/docs/NEST-Corp-ARA_2015_2016,PDF.pdf). At the federal level, policymakers have proposed a solution that would allow unrelated employers to band together in a single plan (an "open MEP") that would be subject to all of the protections of ERISA and would facilitate the cost benefit of pooling.