

MEMO# 30680

April 24, 2017

Congress Nullifies DOL Regulation Regarding Political Subdivision Auto-IRA Programs

[30680]

April 24, 2017 TO: ICI Members SUBJECTS: Pension RE: Congress Nullifies DOL Regulation Regarding Political Subdivision Auto-IRA Programs

On April 13, 2017, President Trump signed H.J.Res. 67, which disapproves of the Department of Labor (DOL) regulation on “Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees”[\[1\]](#) and provides that “such rule shall have no force or effect.”[\[2\]](#) The nullified regulation had amended the DOL safe harbor from ERISA for state-mandated payroll-deduction IRA programs published earlier in 2016,[\[3\]](#) extending the safe harbor to the same programs established and maintained by “qualified political subdivisions” (i.e., cities or counties that meet specified criteria, such as having a population equal to or greater than the population of the least populated state and not being located in a state that has enacted a state-wide mandatory payroll-deduction savings program for private-sector employees).

The nullified regulation had also amended the safe harbor criteria applicable to state programs, to clarify how a state would assume responsibility for the security of payroll deductions and employee savings (a requirement of the safe harbor).[\[4\]](#)

The US House of Representatives passed, on February 15, 2017, H.J.Res. 66, which similarly disapproves of the DOL regulation on state-mandated payroll-deduction IRA programs for private-sector workers.[\[5\]](#) H.J.Res. 66 has not yet been voted on by the US Senate.

Elena Barone Chism
Associate General Counsel

endnotes

[\[1\]](#) The final rule relating to retirement savings programs for private-sector workers established by state political subdivisions was published at 81 Fed. Reg. 92639 (December

20, 2016). See ICI Memorandum No. 30488, dated December 19, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30488.

[2] H.J.Res. 67 is available at <https://www.congress.gov/115/bills/hjres67/BILLS-115hjres67enr.pdf>. The resolution is pursuant to the Congressional Review Act. 5 U.S.C. Chapter 8. In addition to revoking the rule, such a resolution of disapproval by Congress has the effect of precluding an agency from reissuing the rule in substantially the same form or issuing a new rule that is substantially the same, unless authorized by Congress. 5 U.S.C. § 801(b)(2).

[3] See ICI Memorandum No. 30172, dated August 25, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30172.

[4] The amended final rule provided that the state or qualified political subdivision must assume “responsibility for the security of payroll deductions and employee savings, **including by requiring that amounts withheld from wages by the employer be transmitted to the program promptly and by providing an enforcement mechanism to assure compliance with this requirement**” (emphasis added). The amendment also provided a special safe harbor for meeting the prompt transmittal requirement. For more detail, see ICI Memorandum No. 30488, dated December 19, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30488.

[5] H.J.Res. 66 is available at <https://www.congress.gov/115/bills/hjres66/BILLS-115hjres66rds.pdf>.