

MEMO# 30711

May 19, 2017

Congress Nullifies DOL Regulation Regarding State Auto-IRA Programs

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May 19, 2017 TO: ICI Members SUBJECTS: Pension RE: Congress Nullifies DOL Regulation Regarding State Auto-IRA Programs

On May 17, 2017, President Trump signed H.J.Res. 66, which disapproves of the Department of Labor (DOL) regulation on “Savings Arrangements Established by States for Non-Governmental Employees”[\[1\]](#) and provides that “such rule shall have no force or effect.”[\[2\]](#) The nullified regulation provided a safe harbor from ERISA for state-mandated payroll-deduction IRA programs meeting certain conditions.

Previously, on April 13, 2017, President Trump signed H.J.Res. 67, which disapproved of the DOL regulation extending the safe harbor for state-mandated payroll-deduction IRA programs 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).[\[3\]](#)

With this latest action, the roll-back of DOL’s rulemaking on the status under ERISA of state and political subdivision mandatory payroll-deduction IRA programs is complete. However, the guidance provided in DOL Interpretive Bulletin 2015-02 (published concurrently with the safe harbor proposal in November 2015) still stands.[\[4\]](#) Interpretive Bulletin 2015-02 describes the parameters under which states could operate an ERISA-covered plan for private-sector workers without running afoul of ERISA preemption.

Recently, Democrats in both the US Senate and House of Representatives introduced bills that would amend ERISA to specify that an individual retirement plan established and maintained pursuant to a payroll deduction savings program of a state or qualified political subdivision of a state would not be considered an employee pension benefit plan subject to ERISA, as long as the program meets certain requirements (essentially the same requirements set forth in the nullified DOL regulation).[\[5\]](#) The bills are unlikely to move forward, but we will monitor their status.

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endnotes

[1] The final rule relating to retirement savings programs for private-sector workers established by states was published at 81 Fed. Reg. 59464 (August 30, 2016). See ICI Memorandum No. 30172, dated August 25, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30172.

[2] H.J.Res. 66 is available at <https://www.congress.gov/115/bills/hjres66/BILLS-115hjres66enr.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] H.J.Res. 67 is available at <https://www.congress.gov/115/bills/hjres67/BILLS-115hjres67enr.pdf>. See ICI Memorandum No. 30680, dated April 24, 2017. Available at https://www.ici.org/my_ici/memorandum/memo30680.

[4] IB 2015-02 is available at <https://www.gpo.gov/fdsys/pkg/FR-2015-11-18/pdf/2015-29427.pdf>. See ICI Memorandum No. 29502, dated November 18, 2015. Available at https://www.ici.org/my_ici/memorandum/memo29502.

[5] S. 1035 was introduced on May 3, 2017 by Sen. Heinrich (D-NM) and several Democratic co-sponsors. The bill text is available at <https://www.congress.gov/bill/115th-congress/senate-bill/1035/text>. The House version of the bill was introduced on May 18, 2017 by Reps. Bonamici (D-OR) and Crowley (D-NY) and is not yet available.