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By Paul Schott Stevens

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Unless Congress acts, millions of private-sector workers could lose vital consumer protections if they are automatically enrolled in questionable government-run retirement plans under consideration by states and cities across the country.

Last year, the Department of Labor created special carve-outs for these government-sponsored plans, which are targeted toward those who lack access to workplace retirement plans. Those carve-outs would take away from workers the protections that retirement savers have enjoyed for more than 40 years. To protect those workers, the Senate will soon consider resolutions of disapproval that eliminate DOL's misguided exemptions. The Senate should pass these resolutions and send them to the president for his signature without hesitation.

State officials who want to set up these retirement plans say they're responding to a need—broader plan coverage—that private-sector employers haven't filled. The Investment Company Institute supports efforts to expand the retirement system and improve coverage. But those efforts shouldn't scrap the vital federal protections that the Employee Retirement Income Security Act of 1974 has provided for private-sector workers for more than four decades.

What are those protections? Under ERISA, plan sponsors must segregate assets and invest them in a timely fashion; must consider the reasonableness of fees; and must disclose fees, risks, investment objectives and other aspects of plan investments. Most important, those running the plan must act solely in the interest of the plan participants—and can be sued by plan participants if they don't live up to this fiduciary duty.

Congress passed ERISA for good reasons. And a worker who's forced to enroll in a state-run plan has the right to expect the same legal protections enjoyed by those who have a 401(k).

Consumer protections become more important in light of the shaky economic foundations on which state and municipal-run plans are built. Drawing upon decades of research on how

Americans save for retirement, ICI has analyzed these incipient state plans—and has found deep flaws in the models behind them.

Take California's "Secure Choice" plan. Our analysis reveals that a combination of small account balances, high opt-out rates, lower than expected contribution rates, and myriad administrative fees and compliance expenses brings the sustainability of the plan into question. We predicted that fees would need to exceed the 1 percent cap initially proposed—and the state has now said there will be no cap on fees for the first six years of the program. By contrast, private-sector IRA owners who invest in equity mutual funds pay an average fee of 0.69 percent of assets, while 401(k) participants pay even less: 0.53 percent.

Oregon's plan faces similar problems. The Center for Retirement Research at Boston College finds that the plan will need to charge participants fees that exceed operating costs, to recoup startup costs incurred by the plan. These fixed fees will be exceptionally high as a percentage of assets in the early years of the program, reducing returns for the workers forced to enroll in the plan.

Forced saving is hitting the same barriers in the United Kingdom. The National Employment Savings Trust, a mandatory defined contribution program, has garnered small account balances and high costs, equaling 12.5 percent of assets. The British government has loaned NEST nearly £500 million to cover mounting costs.

Starting from scratch to create automatic enrollment programs, new record-keeping systems and investment plans is quite expensive. Those costs will impose unreasonably high fees on the low-income and part-time wage earners who will make up the majority of the workers automatically enrolled in state- and municipal-run plans. And under the DOL exemption, workers can't escape: States are allowed to bar savers from moving their funds to lower-cost private-sector IRAs.

If you need another reason to demand ERISA protections, consider the track record of state and municipal governments when it comes to managing pension assets. These plans already face a collective $3 trillion shortfall. Just last year, the former CEO of the California Public Employees' Retirement System was sentenced to prison for accepting bribes and steering investments to help an associate. Examples of malfeasance and mismanagement in state and municipal pensions systems abound. It makes little sense to trust these governments with the retirement assets of private-sector workers—and even less sense to do so without ensuring baseline consumer protections.

A 50-state patchwork of high-cost state- and municipal-run plans without the protections afforded by ERISA is not something that American workers need—or can afford. The U.S. retirement system has experienced robust growth since the enactment of ERISA. 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. More than 60 million participants in more than 640,000 private-sector defined contribution plans have accumulated more than $5.3 trillion in assets, on top of another $7.8 trillion in assets held by more than 57 million IRA-owning taxpayers.

To improve our retirement system, Washington should build upon its strengths—including making it easier for small workplaces to offer plans, with the same strong federal protections that savers now enjoy. Restoring ERISA should be Congress's first step.

Paul Schott Stevens is president and CEO of the Investment Company Institute.
