

April 27, 2017

TO THE MEMBERS OF THE UNITED STATES SENATE:

The undersigned organizations, representing thousands of businesses, express our support for H.J. Res. 66, a resolution of disapproval under the Congressional Review Act (“CRA”) to invalidate the Department of Labor’s (“DOL”) “safe harbor” regulation on Savings Arrangements Established by States for Non-Governmental Employees.

This “safe harbor” regulation allows states to mandate private employer participation in state-sponsored automatic IRA programs. It also provides that states that offer these programs are not subject to ERISA despite considerable opinions to the contrary. Thus the DOL is encouraging state governments to provide private sector employees retirement programs that do not have the same high-level protections as other private employer-sponsored plans. Recently, Congress passed, and the President signed, H.J. Res. 67, a resolution of disapproval under the Congressional Review Act to invalidate the DOL’s “safe harbor” regulation on Savings Arrangements Established by Political Subdivisions for Non-Governmental Employees. Passage of H.J. Res. 66 would ensure that all retirement plans for private sector workers are subject to equal consumer protections under the law.

The bullets below highlight some our concerns with the “safe harbor.”

- **Lost worker protections** – States offering these plans to private sector employees are not subject to ERISA, therefore limiting the protections for workers in these plans.
- **Different standards from state to state result in an administrative quagmire for employers** – States can and will have different rules for their programs, so employers operating in multiple states, or just with workers from multiple states, will have to track the complex web of varying rules to ensure compliance.
- **Fewer employer plans, especially among small businesses** – If a state mandates auto-IRAs, some employers will decide to avoid taking on the work of offering their own plans and let the state take it on instead, resulting in the loss of significant retirement savings opportunities for their workers.
- **Mismanagement of state pension funds** – Many states have mismanaged their public employee retirement systems, and it’s not clear they’ll do a better job controlling assets of millions of small private sector savers. Also, some state pension funds restrict investments to favor state initiatives or engage in politically motivated investment and divestment schemes instead of investing in the economic interest of the workers.
- **Imposes a mandate on private employers** – The “safe harbor” requires that the state program mandate employer participation even though retirement savings plans are traditionally voluntary.

We urge Congress to take timely action under the CRA to vitiate this misguided regulation. We thank you for addressing this important issue.

Sincerely,

Air Conditioning Contractors of America  
American Benefits Council  
American Composites Manufacturers Association  
Financial Services Institute  
Financial Services Roundtable  
Heating Air-conditioning & Refrigeration Distributors International (HARDI)  
Insured Retirement Institute  
International Franchise Association  
Investment Company Institute  
National Association of Insurance and Financial Advisors (NAIFA)  
National Black Chamber of Commerce  
National Electrical Contractors Association  
National Federation of Independent Business  
National Retail Federation  
Secondary Materials and Recycled Textiles Association (SMART)  
Small Business & Entrepreneurship Council  
Small Business Council of America  
Small Business Legislative Council  
Society for Human Resource Management  
The ESOP Association  
The Latino Coalition  
U.S. Chamber of Commerce

*State Chapters of NAIFA:*

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NAIFA – Alaska  
NAIFA – Arizona  
NAIFA – Arkansas  
NAIFA – California  
NAIFA – Colorado  
NAIFA – Connecticut  
NAIFA – Delaware  
NAIFA – Florida  
NAIFA – Georgia  
NAIFA – Greater Washington, D.C.  
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