Kill Bills: Republicans attack ‘safe harbor’ for state auto-IRAs plans

By Editorial Staff *Thu, Feb 16, 2017*

The move was applauded by the National Association of Insurance and Financial Advisors and the Investment Company Institute. It was condemned by the National Conference on Public Employee Retirement Systems.

House Republicans passed two joint resolutions this week intended to eliminate an Obama Department of Labor ruling, finalized last August, that created a legal “safe harbor” that removed a major regulatory obstacle to the establishment by states and municipalities of auto-enrolled IRAs at private companies that don’t otherwise offer a workplace savings plan.

That obstacle was the possibility that the auto-IRAs would be subject to Department of Labor regulation and the Employee Retirement Income Security Act of 1974 (ERISA), the law that governs workplace pensions. The resolutions were applauded by two financial industry groups, the Investment Company Institute and the National Association of Insurance and Financial Advisors, and condemned by the National Conference on Public Employee Retirement Systems.

If passed, the new legislation could end the creation of those auto-IRAs. The National Association of Insurance and Financial Advisors, whose members sell 401(k) plans to small companies, would prefer to see public marketplaces where employers can buy plans through advisors. ICI represents the asset managers that supply mutual funds to 401(k) plans. NCPERS represents public sector pensions.

But the public plan initiatives began precisely because of market failure—the failure of small employers to offer small plans, even when they had the option to do so—that left millions of Americans with access to individual IRAs—which hardly anyone uses–but not salary deferral plans at work, which are very effective. Several years ago, the U.K. created NEST—the National Employee Savings Trust—to solve the same coverage shortage at small firms in that country.

The two resolutions, introduced February 8, H.J. Res. 66 and H.J. Res. 67, **a**re sponsored by Rep. Tim Walberg (R-MI), chairman of the Subcommittee on Health, Employment, Labor, and Pensions of the House Committee on Education and the Workforce, and Rep. Francis Rooney (R-FL).

H.J. Res. 66 reads:

> Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by States for non-governmental employees.
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> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Department of Labor relating to “Savings Arrangements Established by States for Non-Governmental Employees” (published at 81 Fed. Reg. 59464 (August 30, 2016)), and such rule shall have no force or effect.”

H.J. Res. 67 (which undoes the amendment that allows cities like New York to create non-ERISA savings plans) reads:

> Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by qualified state political subdivisions for non-governmental employees.
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> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that Congress disapproves the rule submitted by the Department of Labor relating to ‘‘Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees” and such rule shall have no force or effect.

The state-sponsored programs are intended to remedy the fact that at any given time about half of American workers have no access to a tax-deferred savings program at work because their employers choose not to sponsor a plan.

Such programs, sometimes called auto-IRAs, are designed to help Americans save more for retirement, lest they run out of money in old age and put added pressure on public sources of assistance, such as Medicaid. The initiatives have made the most progress in states with traditionally Democratic legislatures, such as California, Illinois, Oregon and Connecticut.

But the state and local plans may be unworkable if they are subject to national pension law, known as ERISA. The August 2016 Obama DOL rule resolved that issue, saying that the plans needn’t be regulated by ERISA.

But the 401(k) industry has at times criticized such programs as government intrusion in a private market. Industry-friendly Republican lawmakers, with control over both branches of Congress and a Republican president, are now in a position to make it more difficult for states and cities to sponsor such plans.

NAIFA, the National Association of Insurance and Financial Advisors, whose members sell 401(k) plans to small companies and can earn large commissions by doing so, as well as build relationships with wealthy business owners who may later become retail clients, has opposed the public plans as an intrusion on its turf.
In a February 8letter to Speaker of the House Paul Ryan and House Minority Leader Nancy Pelosi, NAIFA president Paul Dougherty urged Congress to pass H.J.R 66 and 67. A statement on NAIFA's website reads:

> "NAIFA does not believe that a state-run plan that competes with private market plans is the answer. Availability and access to retirement savings options are not the problem— there already exists a strong, vibrant private sector retirement plan market that offers diverse, affordable options to individuals and employers. Nearly 80% of full-time workers have access to a retirement plan through their employer, and more than 80% of workers with workplace access to plans participate in a plan.
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> "NAIFA believes that states would be better served by using scarce state resources for education and outreach efforts designed to educate their citizens about the importance of saving for retirement, rather than implementing their own costly state-run plan. NAIFA supports the voluntary, private market-oriented legislation enacted in Washington State and New Jersey, as discussed below."

In a press release this week, the National Conference on Public Employee Retirement Systems (NCPERS) said it will fight the effort in Congress to reverse various state and local efforts to create publicly-sponsored, auto-enrolled salary-deferral workplace savings plans and require employers who don't otherwise offer retirement plans to help facilitate them.

The new legislation "would attempt to block federal regulations to facilitate the creation of public-private partnerships to expand workplace retirement savings options… The resolutions are designed to derail innovative programs being implemented in seven states and evaluated in at least 25 more," according to an NCPERS release.

In 2016, the Obama Department of Labor issued regulations to facilitate the creation of these public-private plans after confirming that the Secure Choice programs are permissible under the provisions of the Employee Retirement Income Security Act, or ERISA. The resolutions seek to revoke these so-called safe-harbor provisions for state and local programs, respectively.

California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Oregon, and

Washington have already enacted legislation to help private-sector employers automatically enroll their employees in workplace retirement savings programs.

“The alternative facts advanced by the sponsors of these resolutions ignore reality,” said Hank H. Kim, NCPERS executive director and counsel, echoing a phrase—alternative facts—introduced into public discourse by Trump aide Kellyanne Conway recently to describe facts as well as non-facts that are chosen for specific effects.

“These state-led retirement savings programs would be responsibly managed for the benefit of savers and only savers, would meet the needs of employers, and would ultimately save taxpayers billions of dollars,” he added.

States and municipalities have spent several years developing savings programs for the estimated 55 million Americans—half of the private-sector workforce—whose employers offer no retirement benefits. Their goal is to shrink the retirement savings “deficit,” which is the difference with what people need to save for retirement and what they are actually savings.

The Employee Benefit Research Institute has estimated this deficit among workers 25-to-64 years of age at $4 trillion. The EBRI has not demonstrated, however, whether a deficit of this magnitude is a new phenomenon, or whether Americans have always collectively under-saved for retirement by large amounts, or whether it represents an improvement over past savings habits, or what the economic effects might be if Americans tried to increase their savings by $4 trillion.