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MARK WALKER, CHAIRMAN
RSC THE REPUBLICAN STUDY COMMITTEE

H.J. Res. 66 - Disapproving the rule submitted by the Department of Labor relating to savings arrangements established by States for non-governmental employees (Rep. Walberg, R-MI)

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FLOOR SCHEDULE:

Expected to be considered on February 15, 2017, under a closed rule.

TOPLINE SUMMARY:

H.J. Res. 66 would use the Congressional Review Act to provide for the disapproval of the Department of Labor rule that provides safe harbor from the requirements of the Employee Retirement Income Security Act (ERISA) for auto-enrolment savings plans administered by state governments for non-government employees.

COST:

A Congressional Budget Office (CBO) estimate is not yet available.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Up to one-third of private sector employees do not have access to a retirement savings plan through their employer. These individuals have full access to Individual Retirement Accounts (IRAs) and other tax-preferred retirement savings vehicles established in the Internal Revenue Code. However, participation in such programs is far from universal, leaving many individuals without retirement savings and relying entirely on Social Security for retirement income, a practice significantly out of line with the original intent of the Social Security program and that would require resources well beyond what typical Social Security benefits can provide.

In an effort to increase availability of, and total participation in retirement savings accounts, several states have enacted legislation creating state-managed retirement programs for private-sector workers. Many of these state plans include requirements for employers who do not offer qualifying retirement plans to automatically enroll their employees into the state-managed plans. However, uncertainty over whether such

systems are subject to or fully comply with the requirements of ERISA has inhibited the implementation of these programs and deterred some states from enacting similar legislation.

The rule issued by the Obama administration's Department of Labor would provide safe harbor that exempts these state-administered savings plans from ERISA requirements. Plans would qualify under the safe harbor so long as they are state administered, allow an employee to opt-out of participation, and if private employers have only a limited role.

The exemption from ERISA requirements would allow states to create savings plans that do not provide protections and freedom for investors required of private sector plans. Further, many state programs risk eliminating private retirement savings programs by increasing compliance costs on private employers to establish that their programs are qualifying, and therefore exempt from requirements for auto-enrolment of employees in state-managed plans. Further, these systems would result in less freedom for employers and employees to negotiate terms of employment and compensation – including retirement benefits – in a way that each believes in most beneficial. Many conservatives believe that these terms of employment should be entirely at the discretion of the employer and employee, who are each free to contract for the exchange of labor constituted in a compensation agreement. Thus, employees would be left with fewer private options for retirement savings, fewer option in the structure of their compensation, and likely lower total compensation as a result of employers absorbing compliance costs.

H.J.Res. 66 would disapprove of the rule providing ERISA safe harbor for state-administered programs, ensuring retirees are able to avail themselves of the savings program that best suits their own needs, as well as protecting employers from unnecessary costs and requirements.

The Congressional Review Act provides an expedited legislative process for Congress to disapprove of administrative rules through joint disapproval resolutions. Regulations issued by executive branch departments and agencies, as well as issued by independent agencies and commissions, are all subject to CRA disapproval resolutions. In order for a regulation to take effect, the issuing agency must produce a report to Congress. Generally, Congress then has 60 days to pass a resolution of disapproval under the CRA. However, this timeline is shifted in circumstances when rules are submitted to Congress within 60 legislative days of adjournment. In this case, the clock for the 60-day consideration timeline will restart 15 days into the 115th Congress, giving Congress the full window for consideration. While the parliamentarian will determine the exact cut off day after which rules may be subject to the CRA, Congress will be able to consider rules going back to roughly mid-May. Regulations that are successfully disapproved of will then either not go into effect or will be looked at as if they have not gone into effect. The CRA also prevents any new regulation that is substantially similar to a disapproved regulation from being promulgated in the future, absent action from Congress. Rules must be disapproved of on a rule-by-rule basis, and must be disapproved of in their entirety.

Under the CRA process, if a joint resolution is introduced in the Senate within the permitted time period and the resolution is not reported from committee on a timely basis, 30 Senators may petition to bring the resolution to the floor. This resolution would not be subject to the filibuster. When debate commences, the Senate must fully consider the resolution before moving on to any other business, with only 10 hours of debate. Finally, enactment of a joint resolution under the CRA would require a majority vote in each chamber and a presidential signature. Though the CRA has only been used once, in 2000 against Clinton-era ergonomic regulations, conditions today are largely the same as they were that year – with Republicans securing control of the House, Senate, and presidency.

COMMITTEE ACTION:

H.J. Res. 43 was introduced on February 7, 2017, and was referred to the House Committee on Education and the Workforce.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not yet available.

CONSTITUTIONAL AUTHORITY:

Congress has the authority to enact this legislation pursuant to the following: Article I, Section 8, of the Constitution of the United States.

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