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January 23, 2018

The Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Rutledge:

Congratulations on your confirmation as Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA). The Investment Company Institute[1] and our members look forward to working with you to advance the interests of America's workers as they save for retirement.

We promise our strong support for regulatory policies that will build upon the strengths and successes of 401(k) plans and other defined contribution (DC) savings arrangements as vehicles for attaining retirement security. As you know, DC plans now serve as the primary vehicle for private-sector employer-based retirement savings in the United States. More than half of DC plan assets are invested in mutual funds, and many fund organizations provide recordkeeping and administrative services to DC plans as well as critically needed investment information and guidance to plans and plan participants.

As you embark on your responsibilities at EBSA, we thought it would be useful to share with you our views on several items likely to be priorities for EBSA under your leadership. These include the following recommendations:

- **Complete the reexamination of the fiduciary rule, coordinating with the SEC in crafting exemptions.** After the SEC develops a best interest standard of conduct for SEC-registered broker-dealers, the Department should adopt a new prohibited transaction exemption for advice subject to an SEC-governed standard of conduct. The Department also should make critical changes to the expanded definition of fiduciary investment advice.

[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$21.5 trillion in the United States, serving more than 100 million US shareholders, and US$7.1 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

- **Modernize the rules for electronic delivery of information to participants.** The Department should amend its outdated rules to allow participants to opt out of electronic delivery, rather than requiring that they opt in.
- **Streamline and consolidate required notices for the benefit of participants.** Working with the Treasury Department and IRS, the Department should work toward eliminating redundant and irrelevant notices and streamlining and consolidating remaining notices in a way that will focus participants on the key information they need for effective decision-making.
- **Carefully reconsider changes to the Form 5500 to make it compatible and consistent with related disclosure requirements.** The Department and other involved agencies should withdraw 2016 proposed modifications and re-propose new changes that will enhance transparency, harmonize service provider reporting, and increase the utility of the Form 5500, without imposing undue burdens on plan sponsors and service providers.
- **Explore how to encourage more employers to offer workplace plans and participation in such plans by employees.** We encourage the Department to evaluate legal requirements that create obstacles to plan sponsorship among smaller employers and consider providing guidance, where appropriate, that would ease those burdens. For example, the Department could make adoption of multiple employer plans a more realistic option for smaller employers.
- **Clarify application of ERISA's preemption doctrine to state-run plans.** Although well-intentioned, state-run retirement savings programs for private-sector workers raise a number of concerns, including subjecting employers to varying and inconsistent state and local laws. The Department could address some of these issues through guidance clarifying how ERISA's preemption of state laws relating to employee benefit plans applies to these programs.

We discuss each of these items in more detail in attachments to this letter.

ICI and its members look forward to working closely with you and your colleagues within EBSA in developing appropriate and effective regulatory policies in all these areas. I would welcome the opportunity to meet you and to convey in person our strong interest in the retirement agenda. My office will be in touch next week to request such a meeting. In the meantime, we would be happy to provide additional information on these issues or to discuss any of these matters with you or your staff.

Sincerely,

Paul Schott Stevens
President & CEO
Investment Company Institute

Attachments

Investment Company Institute Policy Recommendations
January 2018

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Complete the Reexamination of the Fiduciary Rule, Coordinating with the SEC in Crafting Exemptions

Background:

The Department's fiduciary rule, finalized in April 2016, became applicable on June 9, 2017. New prohibited transaction exemptions (including the Best Interest Contract (BIC) exemption) became available on June 9, 2017, with a transition period (recently extended by the Department) from June 9, 2017 through July 1, 2019. During the transition period, the Impartial Conduct Standards (acting in the investor's best interest, charging no more than reasonable compensation, and avoiding materially misleading statements) of the BIC exemption apply.

The Department is currently reexamining the rulemaking, as directed by the President's February 3, 2017 memorandum to the Department. The memorandum also directs the Department to prepare an updated economic analysis. The Department has collected a number of comments regarding the reexamination, including responses to its request for information (RFI) issued on July 6, which requested comments about possible changes to the expanded definition of fiduciary investment advice and to the BIC exemption.

The SEC is working toward a new standard of conduct for broker-dealers and, according to reports, may issue a proposal as soon as the end of the first quarter of 2018.

Over the past two years, the marketplace has reacted to the fiduciary rulemaking. It is now clear that, if left unchanged, the rulemaking will lead to significant dislocations and disruption within the financial services industry and limit the ability of retirement savers—particularly those with small to moderate account balances—to obtain the guidance, products, and services they need to meet their retirement goals.

ICI's Recommendation:

ICI strongly supports the principle that advice providers should act in their clients' best interest. The Department's final rulemaking, however, is in critical need of reexamination and modification. We have made a number of suggestions to address the rulemaking's many problems, including suggested changes to the expanded definition of "fiduciary." We also have highlighted flaws in the Department's impact analysis supporting its fiduciary rulemaking and how the rulemaking will cause an "advice gap" in the absence of significant changes.

We therefore strongly support the Department's reexamination of its fiduciary rulemaking and applaud the Department's recent 18-month delay related to the rulemaking, to allow time for the reexamination and for coordination with the SEC.

The Department's coordination with the SEC is vital to the outcome of the rulemaking and, in our August 7, 2017 comment letter to the Department, we gave specific recommendations regarding this coordination. We recommend allowing the SEC to develop an enhanced standard of conduct for SEC-registered broker-dealers, which then would allow the Department to adopt a corollary prohibited transaction exemption for financial services providers that are subject to an SEC-governed standard of conduct.

Additional ICI Materials:

ICI submitted the following letters:

- Letter from Dorothy M. Donohue and David M. Abbey, to Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor (September 15, 2017), available at https://www.ici.org/pdf/30872a.pdf (supporting the Department's proposed 18-month delay of the January 1, 2018 applicability date).

- Letter from Dorothy M. Donohue and David M. Abbey, to Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor (August 7, 2017), available at https://www.ici.org/pdf/17_ici_rfiresponse_ltr.pdf (responding to the Department's RFI).

- Letter from Dorothy M. Donohue and David M. Abbey to Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor (July 21, 2017), available at https://www.ici.org/pdf/30795a.pdf (responding to the Department's RFI questions regarding delaying the January 1, 2018 applicability date).

- Letter from Brian Reid and David Blass, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department of Labor (April 17, 2017), available at https://www.ici.org/pdf/17_ici_dol_fiduciary_reexamination_ltr.pdf (supporting the reexamination of the fiduciary rulemaking and responding to the Department's questions relating to the reexamination).

- Letter from Brian Reid and David Blass, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department

of Labor (March 17, 2017), available at https://www.ici.org/pdf/17_ici_dol_fiduciary_applicability_ltr.pdf (supporting the Department's proposed 60-day delay of the April 10, 2017 applicability date).

- Letter from Brian Reid and Sean Collins, to Joseph Piacentini, Director, Office of Policy and Research & Chief Economist, Employee Benefits Security Administration, US Department of Labor (December 1, 2015), available at https://www.ici.org/pdf/15_ici_dol_ria_comment_supp.pdf (supplementing previous letters commenting on the Department's regulatory impact analysis for the 2015 fiduciary rulemaking proposal).

- Letter from David M. Abbey and David W. Blass, to Office of Regulations and Interpretations and Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor (September 24, 2015), available at https://www.ici.org/pdf/15_ici_dol_rule_comment.pdf (supplementing July 2015 comment letters on the Department's 2015 fiduciary rulemaking proposal and responding to certain questions raised by the Department during the August 2015 public hearing).

- Letter from Brian Reid and David Blass, to Office of Regulations and Interpretations and Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor (September 24, 2015), available at https://www.ici.org/pdf/15_ici_dol_ria_comment.pdf (supplementing a July 2015 comment letter on the Department's regulatory impact analysis for the 2015 fiduciary rulemaking proposal and responding to certain questions raised by the Department during the August 2015 public hearing).

- Letter from Paul Schott Stevens, to The Honorable Thomas E. Perez, Secretary, US Department of Labor (July 21, 2015), available at https://www.ici.org/pdf/15_ici_dol_fiduciary_overview_ltr.pdf (summarizing concerns expressed in three separate July 21, 2015 comment letters regarding the Department's 2015 proposed rule defining the term "fiduciary," the proposed exemptions in connection with the definition, and the regulatory impact analysis supporting the proposals).

- Letter from David M. Abbey and David W. Blass, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department of Labor (July 21, 2015), available at https://www.ici.org/pdf/15_ici_dol_fiduciary_def_ltr.pdf (commenting on the Department's 2015 proposed rule defining the term "fiduciary").

- Letter from David M. Abbey and David W. Blass, to Office of Exemption Determinations, Employee Benefits Security Administration, US Department of Labor (July 21, 2015), available at https://www.ici.org/pdf/15_ici_dol_fiduciary_best_interest_ltr.pdf (commenting on the Department's 2015 proposed "Best Interest Contract" exemption).

- Letter from Brian Reid and David W. Blass, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department of Labor (July 21, 2015), available at https://www.ici.org/pdf/15_ici_dol_fiduciary_reg_impact_ltr.pdf (commenting on the Department's 2015 regulatory impact analysis supporting its fiduciary rulemaking proposal).

Modernize the Rules for Electronic Delivery of Information to Participants

Background: The current rules for retirement plans that wish to use electronic media to satisfy disclosure obligations under Title I of ERISA were finalized in 2002—over 15 years ago. To fall within the safe harbor created by the Department's 2002 regulations, a plan administrator must satisfy the "affirmative consent" requirement for a participant, beneficiary or other person entitled to documents who does not have access to the employer's or plan sponsor's electronic information system as an integral part of his or her employment duties. Apart from this safe harbor, the Department has two other separate regulatory standards that govern when a plan can provide required disclosures electronically in particular circumstances.[2] For notices and disclosures required under the Internal Revenue Code (IRC), Treasury rules apply yet another standard—the recipient must have the "effective ability to access" the electronic medium used for delivery. Therefore, the electronic disclosure rules that apply to DOL-required disclosures are more burdensome and complex than the standards found to be protective by the Department of the Treasury and the IRS for most of its participant communications under the IRC.

ICI members that work with plans on complying with ERISA disclosure requirements report that regulatory impediments are the most significant barriers to increasing the use of electronic media in 401(k) plans. We believe that any low rates of the specific participant-by-participant affirmative consents required by the Department's 2002 rule most likely are due to factors such as participant inertia or the administrative burdens associated with obtaining individual consents, rather than a preference for non-electronic delivery.

Since adoption of the electronic delivery regulation in 2002, internet usage has become virtually universal among most plan participants (approximately 93 percent of households with DC plans have internet access).

ICI's Recommendation: We urge the Department to amend its 2002 electronic delivery rule to allow participants to opt out of electronic delivery, rather than requiring that they opt in. As described in our written testimony to the 2017 ERISA Advisory

[2] For pension benefit statements, a DOL Field Assistance Bulletin (FAB) allows the "post and push" method, whereby plan sponsors can use a continuous access secure website for the posting of benefit statements, provided that individuals are notified how to access the website and that they can opt out and receive free paper disclosures instead. DOL Field Assistance Bulletin 2006-03. Participant fee disclosures, on the other hand, can be made electronically if the participant voluntarily provides an email address, but the fact that the employer assigns the employee an email address is not sufficient. DOL Technical Release 2011-03R.

Council, electronic delivery is more effective and enhances disclosure for participants. As shown in our 2011 white paper referenced below, it also creates significant cost savings for plans and plan participants and provides environmental benefits. We are continuing to develop research to support the Department's efforts to modernize these regulations. For example, we are in the final stages of updating the 2011 white paper and will share the updated paper when completed.

Additional ICI Materials:

ICI submitted the following letters:

- Letter from David M. Abbey and Shannon N. Salinas, to Larry Good, Executive Secretary of the ERISA Advisory Council, US Department of Labor (August 18, 2017), available at https://www.ici.org/pdf/30844a.pdf.

- Letter from Mary Podesta, Senior Counsel Pension Regulation and Brian H. Graff, Executive Director/CEO, ASPPA, to Office of Regulations and Interpretations, EBSA, Department of Labor, dated June 14, 2011, available at https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB50/00075.pdf (transmitting white paper in response to the Department's 2011 request for information on electronic delivery).

Streamline Required Notices for the Benefit of Participants

Background: The number of notices that plan administrators must provide to participants and beneficiaries has grown exponentially since ERISA was enacted in 1974. Originally, Congress intended for one document—the summary plan description (SPD)—to serve as the notice that informed participants of their rights and obligations. Since then, a significant number of new notice requirements—now numbering more than 30—have been imposed under ERISA and the Internal Revenue Code. Many of these notices must be provided upon enrollment and annually thereafter, although the specific timing requirements vary according to applicable regulations. The notice and content requirements that the Department and Treasury and IRS impose include many examples of duplication and overlap.

The proliferation of notices, sent at multiple and different times throughout the year, only serves to confuse and overload many participants. This results in many participants ignoring notices and other information. The 2017 ERISA Advisory Council studied enhancing the effectiveness of mandated disclosures.

ICI's Recommendation: The Department, Treasury, and IRS, working together, should find ways to streamline and consolidate existing notices in a way that will focus participants on the key information they need for effective decision making under the plan, while ensuring the availability of more detailed information for further reference. The Department should recommend the elimination of redundant and irrelevant notices. The Department should consolidate information as much as possible in the SPD, which should serve as the "owner's manual" for the plan. The Department should encourage, but not require, the use of a plain language "quick start" guide upon enrollment, consolidating the key information from the SPD, together with information about investment options that participants need to make the core decisions when they enroll in the plan. The Department should modernize its electronic delivery rules to allow plans and service providers to harness the power of the internet to allow information to be available in interlinking layers, allowing participants to access information in a summary format with connectors to more detail. The effort should be done jointly with Treasury and IRS to harmonize the electronic disclosure rules of both regulators.

Additional ICI Materials: ICI submitted the following letter and statement:

- Letter from David M. Abbey and Shannon N. Salinas, to Larry Good, Executive Secretary of the ERISA Advisory Council, US Department of Labor (August 18, 2017), available at https://www.ici.org/pdf/30844a.pdf.

- Submission of the Investment Company Institute in Response to Chairman Hatch's Request for Proposals to Improve the Tax System, Senate Finance Committee (July 17, 2017), available at https://www.ici.org/pdf/17_senate_sfc_tax_system.pdf (*see* "Help Participants Make Informed Decisions: Consolidate Notices," page 12 of submission attachment).

Carefully Reconsider Changes to the Form 5500

Background: In 2016, the Department, with the IRS and PBGC, proposed sweeping changes to the Form 5500. If implemented as proposed, the changes would significantly increase the reporting obligations for all retirement and welfare plans. According to the agencies, the changes are designed to foster monitoring of benefit plans by employers, fiduciaries, participants, and the agencies themselves; collect more data about health and welfare plans; enhance data mineability; provide more information about service provider fees to help fiduciaries evaluate their service arrangements; and enhance reporting on plan compliance.

ICI's Recommendation: ICI generally supports the agencies' goals, including increased transparency of plan investments, harmonization of service provider reporting, and increased availability of information for policy makers and researchers. We are concerned, however, that some proposed changes are not consistent with the purported goals and would impose significant burdens on plan sponsors and their service providers tasked with the completion of the Form 5500. We believe little effort was made to prioritize what new data is needed by the agencies or to assess the burden that the changes will impose on plan sponsors and their service providers. Consequently, we are concerned about the administrative burdens that will be suffered by small plans and frustrated that such burdens will adversely impact efforts to increase plan sponsorship by small employers. We encourage the agencies to withdraw the proposal and re-propose modifications that are consistent with our comments and the purpose of the Form 5500.

Additional ICI Materials: ICI submitted the following letter:

- Letter from David M. Abbey, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department of Labor (December 5, 2016), available at https://www.ici.org/pdf/30458a.pdf.

Explore How to Encourage More Employers to Offer Workplace Plans

Background: Studies have found that concern about administrative costs and burdens are a significant reason that more small businesses do not offer retirement plans.[3] Small employers maintaining their own plan are required to prepare their own plan documents, summary plan descriptions and other participant disclosures, file individual Form 5500s, obtain a separate financial audit, and establish a single trust. Because of the fixed administrative costs of sponsoring a plan, small plans may not qualify for lower cost investment options or lower recordkeeping fees. In addition to administrative and compliance burdens, smaller employers may be challenged by the fiduciary responsibility and liability of selecting and monitoring service providers and plan investment options.

Our research suggests that differences in workforce composition also play a significant role in lower rates of plan sponsorship among small employers.[4] As a group, workers at small firms differ considerably from those at large firms. For example, workers at small firms are less likely to work full-time, and they have lower current earnings and lifetime earnings than do workers at large firms—all factors associated with less ability and desire to set aside current income for retirement savings.

The SIMPLE IRA and similar plan options offer a relatively simple solution to plan sponsorship, addressing some of the administrative burdens identified above. None of the existing plan options, however, work well for workplaces where the majority of workers are focused on saving for goals other than retirement—such as education, a home, or an emergency fund. Many small employers may like to offer employees the option to contribute to a 401(k) or similar plan, but cannot meet the non-discrimination tests and do not have the capacity to make the required employer contributions associated with the safe harbor 401(k) plan or a SIMPLE plan. For employers whose workforce places less value on compensation paid as retirement benefits, the required employer contributions discourage the adoption of SIMPLE plans.

Multiple employer plans (MEPs) offer another path to less burdensome voluntary plan sponsorship, but like SIMPLEs, MEPs are underutilized due to

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[3] *See* GAO, Retirement Security: Challenges and Prospects for Employees of Small Businesses (July 2013), available at https://www.gao.gov/assets/660/655889.pdf; Pew Charitable Trusts, Small Business Views on Retirement Savings Plans (January 2017), available at http://www.pewtrusts.org/~/media/assets/2017/01/small-business-survey-retirement-savings_f.pdf.

[4] Brady, Peter, and Michael Bogdan. 2014. "Who Gets Retirement Plans and Why, 2013." ICI Research Perspective 20, no. 6 (October), available at https://www.ici.org/pdf/per20-06.pdf.

various legal obstacles. Most retirement plans subject to ERISA and the Internal Revenue Code (IRC) are "single employer plans" and are maintained by a single employer for its employees (and other employees of companies within the same "controlled group"). ERISA also allows multiple employers to join together to sponsor a single plan, as a sponsor of plan may include "...any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity." Prior rulings from the Department, however, preclude unrelated small employers from banding together to participate in a single retirement plan maintained by a single service provider, impacting the ability of small employers to gain the same efficiencies that larger employers enjoy. Although tax law does not prohibit unrelated employers from participating in a MEP, a violation of the IRC's tax-qualification requirements by one participating employer in a MEP could result in the disqualification of the entire plan for all participating employers. This further discourages their use.

ICI's Recommendation: We strongly support efforts to increase access to workplace savings arrangements and have written extensively on the importance of pursuing policies to build on the strengths and successes of the existing voluntary system.[5] Relatively modest changes—for example, making available plans with simple features and no employer contribution obligation, as well as providing easier access to MEPs for small employers—could bring more employers into the system and generate better outcomes for plan participants, without detracting from the system's successful features.

We encourage the Department to evaluate legal requirements that create obstacles to plan sponsorship among smaller employers. The Department, where appropriate, should voice support for legislative changes that would address these obstacles and, working with IRS and Treasury, explore agency initiatives that would encourage more voluntary plan sponsorship.

In particular, various legislative proposals have sought to ease restrictions on "open" MEPs, allowing unrelated employers to pool assets and participants under a single plan.[6] Other proposals aim to offer relief from required

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[5] While we agree with the sentiment that more people need access to retirement plans at work, we believe that policy makers need to appreciate that the current system is working well for most American workers. *See, e.g.,* https://www.ici.org/pressroom/news/17_news_retirement_income and https://www.ici.org/viewpoints/view_11_wgrpandw_update.

[6] *See, e.g.,* "Retirement Enhancement and Savings Act of 2016" (S. 3471) and "Automatic Retirement Plan Act of 2017" (H.R. 4523).

employer contributions for employers with a majority of workers who are focused on saving for goals other than retirement.[7]

ICI supports the open MEP concept, but we recommend targeting such plans to employers with fewer than 100 employees—the employer segment most in need of solutions to encourage retirement plan sponsorship. Allowing small employers to participate in a MEP—regardless of the employer's industry or any other preexisting relationship with other participating employers or the plan sponsor—will reduce administrative and compliance costs and burdens, and ultimately improve the availability of retirement plans to employees of small employers. While legislative changes would be necessary to fully implement the open MEP concept, the Department could provide targeted changes through guidance to make open MEPs a more realistic option for small employers.

Additional ICI Materials:

ICI submitted the following letter, comments and statement:

- Submission of the Investment Company Institute in Response to Chairman Hatch's Request for Proposals to Improve the Tax System, Senate Finance Committee (July 17, 2017), available at https://www.ici.org/pdf/17_senate_sfc_tax_system.pdf.
- Comments of the Investment Company Institute on the Retirement Improvements and Savings Enhancements Act of 2016 Discussion Draft, Senate Finance Committee Ranking Member Wyden (December 7, 2016), available at https://www.ici.org/pdf/30464a.pdf.
- Submission of the Investment Company Institute to Senate Finance Committee Working Group on Savings & Investment (April 15, 2015), available at https://www.ici.org/pdf/15_senate_fin_saving_investment_wg.pdf.

[7] For example, the "starter k" plan was proposed by then Ranking Member Orrin Hatch (R-UT) in S. 1270, the "Secure Annuities for Employee (SAFE) Retirement Act of 2013."

Clarify Application of ERISA Preemption Doctrine to State-Run Plans

Background: Several states and cities have attempted to address the retirement plan coverage issue, after seeing the failure of various proposals (such as the automatic IRA) at the federal level. States and cities have responded with their own programs that range from voluntary marketplace solutions intended to connect employers with private-sector savings plans to mandates for employers to enroll employees into state- or city- run retirement programs.

In November 2105, the Department issued Interpretive Bulletin 2015-02, providing guidance on how a state could adopt measures to facilitate the adoption of ERISA-covered plans by private employers, including state-sponsorship of a multiple employer plan. The Department also issued regulations, finalized in 2016, to provide a safe harbor from ERISA for state-run payroll deduction IRA programs, including those with automatic enrollment. The Department proposed and finalized a second regulation to extend the safe harbor to political subdivisions of a state (i.e., cities and counties). In 2017, Congress rescinded both regulations pursuant to the Congressional Review Act.

In the regulations, the Department expressed uncertainty as to whether these state and local government programs are preempted by ERISA and acknowledged that there may be court challenges.[8] Despite the fact that the safe harbor is no longer available due to the rescission, states and cities are continuing to move forward with plans to require private-sector employers to automatically enroll employees into state- or city-run retirement programs, in most cases, IRAs. Oregon has already begun enrolling employees into its mandatory program, OregonSaves.

ICI's Recommendation: While well intentioned, we are concerned that these programs are based on a misunderstanding of the reasons some employers do not offer plans to their employees and will impose untenable costs on participants in those plans. We also are concerned that employers that currently sponsor plans will be forced to comply with a patchwork of varying state and city laws, which will negatively impact employers' interest in plan sponsorship. There are better ways to encourage plan sponsorship, for example, allowing unrelated small employers to participate in multiple employer plans.

[8] *See* 81 Fed. Reg. 59464, at 59473 (August 30, 2016) (final rule on savings arrangements established by states for non-governmental employees).

We urge the Department to clarify the ERISA preemption issue, given its great importance to employers.[9] Employers sponsoring retirement plans for their employees already are subject to complex federal law requirements and should not be subject to the vagaries of different state programs too. That is precisely what the preemption doctrine was intended to prevent.

Additional ICI Materials:

ICI submitted the following letters:

- Letter from Paul Schott Stevens to Senate Leadership (February 22, 2017), available at https://www.ici.org/pdf/17_senate_cra_dol.pdf (expressing support for passage of joint resolutions of disapproval under Congressional Review Act procedures).

- Letter from David W. Blass, to Kimberly Olson, Rules Coordinator, Oregon State Treasury (February 22, 2017), available at https://www.ici.org/pdf/30600a.pdf (provide these comments on the proposed rules for the Oregon Retirement Savings Plan regarding how to structure the ORSP employer exemption in light of ERISA preemption).

- Letter from David W. Blass, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department of Labor (September 29, 2016), available at https://www.ici.org/pdf/30282.pdf (responding to the Department's proposal regarding savings arrangements established by state political subdivisions for non-governmental employees).

- Letter from Paul Schott Stevens, to Edmund G. Brown, Governor of California (August 8, 2016), available at https://www.ici.org/pdf/16_ici_ca_secure_choice.pdf (urging critical examination of costs and legal risks before signing SB 1234, California Secure Choice Retirement Savings Program).

- Letter from David W. Blass, to Office of Regulations and Interpretations, Employee Benefits Security Administration, US Department of Labor (January 19, 2016), available at https://www.ici.org/pdf/29661.pdf (responding to the Department's proposal regarding savings arrangements established by states for non-governmental employees).

[9] ERISA broadly preempts any state law insofar as it "relates to" any employee benefit plan covered by ERISA. While the preemption analysis will depend on the specific details of the state law, we believe that ERISA would preempt certain aspects of the state-run plans that have been adopted to date. For example, a state law that requires an employer to enroll employees who are not eligible for the employer's ERISA plan would clearly impact or influence the design and administration of that plan because it would effectively establish new state-specific standards for plan eligibility that conflict with ERISA.