Congressional Budget Office
Cost Estimate

February 27, 2023

H.J. Res. 30, Providing for Congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights"

As posted on the Website of the House Committee on Rules on February 23, 2023
https://rules.house.gov/bill/118/hj-res-30

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	No
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between zero and $500,000.

H.J. Res. 30 would disapprove the final rule "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," which was submitted by the Department of Labor (DOL) and published in the Federal Register on December 1, 2022. The rule became effective on January 30, 2023. The resolution would invoke a legislative process established by the Congressional Review Act, which would repeal the final rule and prohibit DOL from issuing the same or a similar rule in the future.

Background

Under the Employee Retirement Income Security Act of 1974, fiduciaries of private pension plans must act in the interest of plan participants, including when making investment decisions. The rule "Financial Factors in Selecting Plan Investments," issued on November 13, 2020, required fiduciaries to make investment decisions based solely on "pecuniary factors." That rule included a "tiebreaker" standard, under which fiduciaries could consider other benefits when "alternative investment options are economically indistinguishable."

The 2022 rule clarified how plan fiduciaries may consider climate change and other environmental, social, or governance (commonly referred to as ESG) factors when making investment decisions. Under the new regulation, fiduciaries may consider “the economic effects of climate change and other environmental, social, or governance factors,” but investment decisions “may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk.”

Estimated Budgetary Effects

Reversing the rule could affect federal revenues if the amount that individuals or employers contribute to tax-preferred plans changed. Additionally, premiums (which are recorded as offsetting receipts and reduce direct spending) received by the Pension Benefit Guaranty Corporation could be affected because those premiums are based in part on the amount of plan assets.

Because fiduciaries must maximize investment performance, CBO and the staff of the Joint Committee on Taxation (JCT) do not expect the new rule to substantially affect investment outcomes. Projections of investment returns are inherently uncertain, but we expect an equally likely chance of small increases or small decreases in federal revenues and outlays stemming from this resolution. The new rule may induce individual employers and workers to raise or lower their pension contributions, but CBO and JCT project that total contributions will not change and thus there would be no effect on expected revenues and net direct spending.

If the 2022 rule were reversed, the regulations that were previously in place would once again become effective. The administrative burden on DOL to reverse the regulations would be minimal, so CBO estimates that administrative costs would be insignificant. Any such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Noah Meyerson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Mark P Hadley for

Phillip L. Swagel
Director, Congressional Budget Office