GREAT GRAY TRUST COMPANY | Grow Confidently

March 6, 2025

Senator Jack Reed
728 Hart Senate Office Building
Washington, DC 20510

Re: Legislation to Enhance 403(b) Retirement Plans by Providing Equal Access to CITs

Dear Senator Reed,

We respectfully request your support for the Retirement Fairness for Charities and Educational Institutions Act of 2025, S.424 (the "CIT Bill"). This bipartisan bill will allow public school teachers, employees of hospitals, charities, and other sponsors of 403(b) retirement plans to have the same access to collective investment trusts ("CITs") that has been afforded to both governmental employees in similar 457(b) retirement plans and workers in private sector retirement plans, like 401(k) plans, for decades.

CITs are strictly regulated investment funds in which tens of millions of Americans invest to save for their retirement. CITs often have meaningfully lower fees and expenses than other pooled investment products like mutual funds and variable annuities. On average, CITS are cheaper than corresponding mutual funds 88% of the time, and the average actively managed CIT costs 60% less than the average actively managed mutual fund.[1] The cost savings come with investor protections, not at their expense, because CITs are subject to a regulatory regime that is specifically designed for retirement plan investors. These advantages help explain why CITs recently surpassed mutual funds as the most popular investment vehicle in defined contribution retirement plans – with CITs used by 82% of such plans.[2]

Unlike 401(k) plans and other employer sponsored retirement plans, 403(b) plans are limited to offering only mutual funds and annuity contracts – products that often have higher costs than CITs. By enacting the SECURE 2.0 Act of 2022, Congress expressed its intent to address this inequity by amending the tax laws to permit 403(b) plans to invest in CITs. The CIT Bill will finish the job by making CITs available under the securities laws, realizing the intent of SECURE 2.0.

Your leadership was essential to the enactment SECURE 2.0, which helped "strengthen the retirement readiness and security of millions of hardworking Americans" and delivered "significant improvements to the nation's private retirement system by expanding retirement savings

[1] Source: Morningstar, 2023 Retirement Landscape Report
[2] Source: Callan Institute, 2024 Defined Contribution Trends Survey.

options."[3] We respectfully request that you once again help lead a bipartisan coalition and deliver a significant win for 403(b) plan participants by giving them equal access to CITs.

In promoting equal access to CITs for 403(b) plans, we are commonly asked two questions:

1. Do CITs' cost-savings come at the expense of regulation or retirement investor protections?

The answer is definitively 'no'. CITs are strictly regulated under state or federal banking laws, trust law, and, importantly, the U.S. Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA, the CIT trustee and other investment managers are subject to the law's full array of fiduciary duties, described by appellate courts as "the highest known to the law." They are also required to comply with ERISA's strict "prohibited transaction" rules designed to address potential conflicts of interest. By contrast, a mutual fund manager is not subject to ERISA's fiduciary obligations or prohibited transaction rules, and the assets of the mutual fund are not considered ERISA plan assets, even if an ERISA plan invests in the mutual fund.

Regulation of CITs is well tailored because they are exclusively available to institutional, tax-qualified investors like 401(k) plans and must comply with legal requirements that focus entirely on them. By contrast, mutual funds can be sold to all types of investors, including individual retail investors. Mutual funds' widespread distribution has prompted regulation that accounts for everyone but is not tailored for any particular investor segment. This difference results in CITs often being meaningfully cheaper than corresponding mutual funds, while offering enhanced protections designed for retirement investors. The cost savings directly benefit retirement plan participants and can compound over time to significantly enhance their retirement security.

2. Will the Legislation Help or Hurt Participants in Non-ERISA 403(b) Plans?

It will help them by offering access to ERISA protections through investments in CITs that accept ERISA plan assets. Participants in non-ERISA 403(b) plans will gain ERISA protections by investing in CITs alongside participants in private sector and 403(b) ERISA plans. These ERISA protections are available because a CIT must be managed pursuant to the requirements of ERISA if it includes any ERISA plan assets – even if they are commingled with non-ERISA 403(b) plan assets. The cost of setting up and administering CITs makes parallel ERISA and non-ERISA CITs uneconomical. Moreover, CIT trustees already comply with ERISA when managing their existing CITs – as a result, they have extensive expertise with and no aversion to the ERISA regulatory regime. Thus, Great Gray Trust Company plans to use the same CITs for ERISA and non-ERISA plans, and we expect other CIT trustees to do the same. In this way, the CIT Bill will provide meaningful new retirement investor protections for participants in non-ERISA 403(b) plans who invest in CITs. A 403(b) plan should be allowed to choose a lower cost CIT that is subject to ERISA over a higher cost mutual fund that is not subject to ERISA.

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[3] See, Reed Helps Pass Retirement Reform to Boost Retirement Savings for More Americans | Senator Jack Reed

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It is time to enable 403(b) plans to offer the benefits of CITs to the 14.5 million hard-working public-school teachers and employees of hospitals, charities and other tax-exempt organizations who use these plans to save for retirement, including the 52,000 403(b) plan participants in Rhode Island.[4] With your leadership in support of the CIT Bill, these Americans could finally access the same investment opportunities as those in other employer-sponsored retirement plans and have a better chance to achieve a financially secure retirement.

Sincerely,

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[4]See https://araadvocacy.org/wp-content/uploads/2024/11/ARA-GAC-ARA-Map-Infographic-403b-Participant-Count.pdf.