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## **Honorable Mention**

By Editorial Staff    *Thu, Oct 31, 2019*

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*Great American amends fee-based annuity contracts; Security Benefit issues two new index annuities; New mortality tables for pension plans issued by SOA; Fidelity offers in-plan income planning tools; State regulators pass on 'best interest' rule—for now; Athene gets \$1.6 billion in capital from Apollo; Brexit stymies pension law progress in UK; Settlement between MIT and its plan participants described*

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### **Great American amends fee-based annuity contracts**

Less than three months after receiving an IRS Private Letter Ruling (PLR) that eases the taxation of advisory fees, Great American Life has applied a new endorsement to existing annuity contracts that also reduces potential negative effects of the payment of advisory fees from a no-commission (“fee-based”) annuity.

The endorsement provides three new benefits for Great American’s fee-based annuity contract owners. First, withdrawals to pay advisory fees are not subject to an early withdrawal charge or market value adjustment. Second, the withdrawal does not reduce the contract’s free-withdrawal amount. And third, the withdrawal will not reduce income rider benefits.

This favorable treatment of advisory fees is the latest milestone in Great American’s goal to make annuities more compatible with an advisory portfolio.

“The negative consequences were twofold when it came to advisory fee withdrawals. The withdrawal may have been a taxable event to the client, with the potential for an additional 10% tax penalty. Plus, clients had to consider how the withdrawal would affect their annuity benefits,” says Tony Compton, Great American Life Divisional Vice President of Broker/Dealer and RIA Sales. “With the Private Letter Ruling and now this endorsement, we’ve eliminated those negative consequences, making it easier for our annuities to work within a fee-based portfolio.”

The endorsement is included with all Great American Life fee-based annuity contracts issued on or after October 28, 2019. The company is retroactively endorsing contracts issued before October 28. The favorable treatment is subject to the limitations described in the endorsement.

The PLR was issued to Great American Life on August 6, 2019 and concluded that advisory fees may be withdrawn from a nonqualified fixed-indexed annuity without creating a taxable

event for the client. The ruling also eliminates the 10% tax penalty that may have applied to clients who are not yet age 59½. The ruling is limited to fee-based nonqualified annuities sold by Great American Life. The annual fee cannot exceed 1.50% of the annuity's account value.

Great American Life launched the industry's first fee-based fixed-indexed annuity in 2016. Since that time, the company has introduced several technology solutions to support the unique needs of Registered Investment Advisors (RIAs), including a cutting-edge portfolio simulator and an advanced electronic application system. Visit [GreatAmericanRIA.com](http://GreatAmericanRIA.com) to find these resources and more.

Great American Life Insurance Company is a member of Great American Insurance Group and is rated "A+" by Standard & Poor's and "A" (Excellent) by A.M. Best for financial strength and operating performance.

#### **Security Benefit issues two new index annuities**

Security Benefit Life Insurance Company has launched two fixed index annuities (FIA) as part of its new Strategic Growth Series. The Strategic Growth Annuity features accumulation-oriented caps, participation rates and spreads without a bonus, and the Strategic Growth Plus Annuity features a six percent premium bonus with competitive caps, participation rates and spreads.

Both annuities feature new 1-year and 2-year Index Accounts based on the Morningstar Wide Moat Focus Barclays VC 7% Index.

Advisers and clients can allocate the purchase payments among nine available interest crediting options, including three custom indexes through some of the leading names in financial services, S&P, Morningstar, Barclays, and UBS:

- The S&P 500 Low Volatility Daily Risk Control 5% Index Accounts (1 year and 2 year options)
- The UBS Market Pioneers Index Accounts (1 year and 2 year options)
- The new Morningstar Wide Moat Focus Barclay's VC 7% Index Accounts (1 year and 2 year options)

The new products both feature nursing home and terminal illness waivers in most states, and a free withdrawal of up to 10% of the prior year's contract anniversary account value, beginning in the second contract year.

### **New mortality tables for pension plans issued by SOA**

With its updated private sector mortality tables, Pri-2012, the Society of Actuaries has provided a new basis for mortality assumptions for U.S. pension plans, replacing its prior tables, RP-2006. The final version of the Pri-2012 tables includes clarifications but no material changes from the draft issued May 2019.

“Pri” is short for “private retirement plan,” and “2012” represents the central year of the final dataset from which the mortality tables were developed. The dataset includes data from 2010-2014, covering approximately 16.1 million life-years of exposure and 343,000 deaths from private-sector plans across the U.S.

“The Pri-2012 dataset is almost fifty percent larger than the data that was available when we developed our previous tables five years ago,” said Dale Hall, FSA, CERA, MAAA, CFA and managing director of research for the SOA.

Analysis of this comprehensive data reveals the following implications for private pension plans:

**Pension liabilities:** Most plan sponsors that update their mortality assumptions from the RP-2006 tables to the Pri-2012 tables will experience only a small change in their pension liabilities, usually within plus or minus one percent. The amount will vary depending on the plan’s mix of occupations, ages and gender, as well as the discount rate and other assumptions used to compute liabilities.

**Life expectancy:** When moving from the RP-2006 tables to the Pri-2012 tables, the life expectancy of a 65-year-old female pension plan participant remains roughly unchanged at 87.4 years. The life expectancy for a 65-year-old male pension plan participant decreases 0.3 years, to 84.7 years from 85.0 years.

**Mortality predictors:** Participants in multiemployer plans did not exhibit significantly different mortality than participants in single employer plans after controlling for other factors, such as “collar” type and income level. The SOA found that type of occupation (blue-collar vs. white-collar) is emerging as a stronger predictor of mortality than plan benefit amount.

For additional information, including the full Pri-2012 report, please visit <https://www.soa.org/resources/experience-studies/2019/pri-2012-private-mortality-tables/>.

### **Fidelity offers in-plan income planning tools**

Fidelity Investments this week announced new Retirement Income Solutions for the individuals who choose to keep their savings in a previous employer's retirement plan (e.g., 401(k) or 403(b)). More than half (55%) of retirees on Fidelity's platform keep their savings in a plan past the first year of retirement, a Fidelity release said.

Fidelity's first in-plan retirement solution is designed to be part of an employer's retirement lineup and combines digital tools, mutual funds and a cash withdrawal strategy to help workers transition retirement savings into a durable income stream.

Fidelity's new Retirement Income Solutions includes three core components:

A digital end-user experience, a customizable cash flow withdrawal strategy, and a suite of dedicated retirement income funds.

Fidelity Managed Retirement Funds are designed to be part of an employer's 401(k) or 403(b) plan fund line-up for retirees. The funds, which provide an age-appropriate asset allocation mix that becomes more conservative over time, are designed to complement a withdrawal and payment process that help to deliver a sustainable income stream in retirement.

The Fidelity Managed Cash Flow withdrawal strategy is designed to complement the Fidelity Managed Retirement Funds. It models various systematic withdrawal payment options and aims to provide a steady income payment strategy for individuals while maintaining a balance throughout their retirement. Payout rates increase over time and are updated annually.

The Fidelity Managed Retirement Funds are designed to be part of an employer's retirement plan fund line-up and used by investors at or nearing retirement who plan on withdrawing money from their retirement savings. The funds are designed to deliver an age-appropriate asset allocation of a diversified mix of underlying equity, fixed income, and short-term strategies that evolve over time.

Fidelity currently offers seven Managed Retirement Funds, allowing investors to select a fund that aligns with their birth year. Funds are designed for investors age 60 and older who turned (or will turn) age 70 in or within a few years of the applicable fund's horizon date - for example, an investor born in 1945 would likely select Fidelity's Managed Retirement 2015 Fund.

The Fidelity Managed Retirement Funds are available now, while the digital experience (which includes the online planning tool) will be available in early 2020. Fidelity Managed Cash Flow and the digital experience are available at no extra cost to Fidelity 401(k) and 403(b) clients, while there are expenses associated with the Fidelity Managed Retirement Funds.

### **State regulators pass on ‘best interest’ rule—for now**

The latest draft annuities regulation approved by a National Association of Insurance Commissioners’ subcommittee and forwarded to the full Life Insurance and Annuities Committee for a vote stops short of creating a regulation to require agents to put customers’ “best interests” first.

State insurance commissioners say they are reluctant to replace the word “suitability” with “best interest” in their annuities regulation proposal for fear they will create a fiduciary standard for insurers and agents who recommend annuities products. They indicate that lack of clarity in the Securities and Exchange Commission’s Regulation Best Interest and whether or not the term “best interest” confers a fiduciary duty remain a roadblock. “I do think we’ll get there, sooner rather than later,” Iowa Insurance Commissioner Doug Ommen told Financial Advisor.

“We have a safe harbor for broker-dealers. The question now is do we create one that extends to individuals in the investment advisor space. We’re evaluating whether it is OK for an insurer to rely on securities regulation to eliminate the need for insurer supervision and rules. We’re still not there yet. We’ll be talking about it.”

### **Athene gets \$1.6 billion in capital from Apollo**

Athene Holding Ltd., the retirement services company, and Apollo Global Management, Inc., the global alternative investment manager, have agreed to a share exchange under which Apollo will buy Athene shares and eliminate Athene’s current multi-class share structure.

The proposed transaction will add about \$1.6 billion of capital for Athene, including approximately \$1 billion of incremental excess capital. The companies expect the move to “significantly improve Athene’s index inclusion eligibility and expand Athene’s investor base,” according to a release this week.

In connection with the transaction, Athene’s board of directors has approved an increase in the share repurchase authorization of \$600 million of the company’s outstanding common

shares. Athene expects to utilize the \$350 million of cash proceeds from Apollo toward these repurchases. Since Athene commenced share repurchases in December 2018, it has repurchased 22.4 million shares in aggregate, representing \$928 million of capital returned to shareholders.

Apollo's operating group entities will acquire approximately 35.5 million common shares of Athene for approximately \$1.55 billion, which is expected to increase economic ownership by Apollo and certain of its related parties and employees to approximately 35%. The acquisition by Apollo will consist of:

Approximately 7.5 million of Athene shares in exchange for \$350 million of cash, valued at a price of \$46.20 per share or a 10% premium to the closing market price on October 25, 2019; and,

Approximately 28.0 million Athene shares sold at a 2.3% premium in exchange for an approximately 7% equity stake in Apollo's operating group entities (approximately 29.2 million Apollo operating group units), valued at approximately \$1.2 billion based on the closing market price of Apollo's Class A common shares on October 25, 2019.

Apollo and its operating group entities will enter into a lock-up on their existing and newly acquired shares of Athene for three years from the initial closing date. Athene will not have a lock-up on its Apollo operating group equity. Both companies view their investments as strategic in nature and intend to be long-term holders.

Athene's bye-laws will be amended and restated to eliminate its multi-class share structure with all outstanding shares of Athene's Class B Common Shares converted into shares of Class A Common Shares, and all outstanding Class M Common Shares converted into a combination of Class A Common Shares and warrants to purchase Class A Common Shares. Eliminating Athene's multi-class share structure increases alignment of interests between Apollo's voting and economic interests in Athene, and is expected to remove material impediments for additional index inclusion, which should serve to increase Athene's appeal to a broader group of active and passive investors.

### **Brexit stymies pension law progress in UK**

The Brexit controversy is, among many other things, putting Britain's proposed pension reforms in limbo.

Major drafts of occupational pensions legislation were introduced by the UK government

two weeks ago, but the House of Commons' vote this week for a December election has short-circuited progress on the bill. The House of Lords is expected to approve that vote, and parliament will be dissolved on 6 November 6.

The decision to hold new elections has caused the cancellation of the second reading of the Pension Schemes Bill in the House of Lords, which was due to take place Tuesday, and to the cancellation of a meeting of the House of Commons Work and Pensions select committee, who had planned to interview executives of Clara Pensions, Pension SuperFund and Pension Insurance Corporation yesterday.

The Pension Schemes Bill was announced in the Queen's Speech on October 14 and introduced in the House of Lords the next day for its first reading. An initial debate on the bill would have happened during today's second reading.

However, a December election "pulls the curtain down on the government's Pension Schemes Bill," said David Everett, partner at pensions consultancy LCP. "In so doing, [it] throws completely up in the air work that has been underway, in one form or another, on a pensions bill since David Cameron was prime minister."

The bill includes provisions to introduce a collective defined contribution (CDC) framework, enable pension dashboards, and grant new powers to The Pensions Regulator to tackle corporate misbehavior.

Even if Boris Johnson returns as prime minister following a general election it is not clear if the reform legislation will be resurrected and if so, when. "And if he isn't, then at the very least there is likely to be a long delay whilst the work on the bill is reviewed by the incoming administration," Everett said.

#### **Settlement between MIT and its plan participants described**

The St. Louis law firm of Schlichter Bogard & Denton, which specializes in representing 401(k) plan participants in class-action lawsuits against plan sponsors and providers, said that it filed a preliminary settlement approval motion this week for the employees and retirees of the Massachusetts Institute of Technology, in their suit against the university.

The settlement terms include the creation of an \$18.1 million settlement fund for the plaintiffs, as well as non-monetary relief.

The original complaint, David B. Tracey, et al., v. Massachusetts Institute of Technology, et

al., was originally filed in the U.S. District Court of Massachusetts, in August 2016, alleged that the school violated its fiduciary duties under the Employee Retirement Income Security Act (ERISA).

According to the complaint, MIT's employees lost millions in retirement savings because of Fidelity's excessive recordkeeping fees and its failure to monitor investments. MIT denied any fiduciary breach in its operation of the plan.

Beside providing financial compensation, MIT will provide annual training to plan fiduciaries on prudent and loyal practices under ERISA and proper decision making in the exclusive best interests of plan participants over the next three years.

Under the terms of the settlement, the school will also:

Issue a request for proposals from at least three qualified service providers for recordkeeping and administrative services for the plan

Establish recordkeeping fees based not on a percentage of assets, but instead on a flat fee per participant

Deposit any revenue-sharing related to plan investments in the plan trust and return them to plan participants at least annually, and not use them to defray lawful plan expenses.

Schlichter Bogard & Denton, based in St. Louis, MO, created the first excessive fee 401(k) and 403(b) litigation on behalf of employees and retirees. In 2009, the firm won the first full trial of a 401(k) excessive fee case against ABB. The firm's *Tibble v. Edison* is the first and only 401(k) excessive fee case to be argued in the Supreme Court. On May 18, 2015, the firm won a landmark unanimous 9-0 decision in that case, in which both the AARP and the Solicitor General wrote supporting briefs for the employees.

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