It’s Back: The Norcross-Walberg Bill to Make Annuities a 401(k) Default

By Editorial Staff *Thu, Feb 17, 2022*

Under the bill, participants who are defaulted into an annuity must have 180 days before their premium becomes illiquid, and the participant must receive 30 days notice before the premium becomes irrevocable.

Bipartisan legislation has been reintroduced that would allow retirement plan sponsors to default participants into annuities, either for guaranteed returns during the accumulation period or for lifetime income in retirement.

The legislation, which was first introduced in December 2020, endorses annuities without specifying any particular type of annuity. Any deferred annuity includes the option to convert the contract assets to a lifetime income stream. But only certain annuities are sold or used specifically for lifetime income. The legislation doesn’t appear to recognize that distinction.

Also it remains to be seen whether plan sponsors will be comfortable defaulting their clients into an irrevocable or illiquid product. So far, they have not been, despite their general inclination to show participants a path to pension-izing their savings.

The Lifetime Income for Employees Act, introduced by Rep. Donald Norcross (D-N.J.) and Rep. Tim Walberg (R-Mich.), would allow retirement plan sponsors to use lifetime income solutions as qualified default investment alternatives (QDIA) for a portion of contributions made by participants who have not made investment selections. The Insured Retirement Institute (IRI) supports the legislation.

QDIAs, created by the Pension Protection Act of 2006, have proven to be an essential tool to enhance retirement security by providing retirement savers with the ability to accumulate assets without needing to make underlying investment selections inside of their workplace retirement savings plan.

Under the bill, the current QDIA safe harbor regulations would be amended to allow, but not require, a QDIA to include a limited investment in a non-liquid annuity component, which provides a guaranteed return on investment. Plan sponsors would not need to make any changes to their current QDIA.

The Department of Labor issued an information letter in 2016 that makes clear an investment with an annuity component can be offered consistent with a plan sponsor’s fiduciary duty. However, the current QDIA safe harbor regulation would not allow the investment to serve as a QDIA.

“This legislation would simply update regulations to reflect innovations in retirement security investment products,” Richman added. “The solution provided by the Lifetime Income for Employees Act will significantly increase access to and the use of protected lifetime income products to help retirement savers produce sustainable income during their retirement years.”

The legislation

Here is an edited text of the bill:

This Act may be cited as the “Lifetime Income For Employees Act”.

Section 404(c)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c) is amended by adding at the end the following: “Default investments made under this subparagraph may include a covered annuity contract.”

The term ‘covered annuity contract’ means an investment in an annuity contract that meets the following requirements:

The annuity contract does not impose a liquidity restriction on the transfer of invested amounts during the 180-day period beginning on the date of the initial investment in such contract by the participant or beneficiary.

The fiduciary ensures that each participant or beneficiary is provided (not later than 30 days before the date of the imposition of a liquidity restriction described above) written notice in a manner that is reasonably designed to be understood by the average plan participant, that includes:

- An explanation of the circumstances under which assets in the account may be invested on behalf of the participant or beneficiary in the annuity contract, including an explanation of the targeted range and maximum amount or percentage of such assets to be invested
- An explanation of the rights, and any limitations or restrictions thereon, of a participant or beneficiary to direct or transfer amounts invested, or to be invested, in an annuity contract to other investment alternatives available under the plan
- A general description of the annuity contract, including the duration of guaranteed

payments and identification of the insurer
An explanation of how a participant or beneficiary may obtain additional information, in writing or electronically, about their investment alternatives
- A copy of the annuity contract

The fiduciary cannot allocate more than 50% of any periodic contribution or, immediately after a rebalancing of account investments, 50% of the value of the assets of the account, to the annuity contract (or, as applicable, to the portion thereof to which a liquidity restriction applies after the 180-day period mentioned above.

The term ‘annuity contract’ means a contract (or provision or feature thereof) that is issued by an insurer qualified to do business in a State; and provides for the payment of guaranteed benefits annually (or more frequently) for a fixed term or for the remainder of the life of the participant or beneficiary or the joint lives of the participant and the participant’s designated beneficiary.

The amendments made by subsection (a) shall take effect on the date of the enactment of the Lifetime Income For Employees Act.