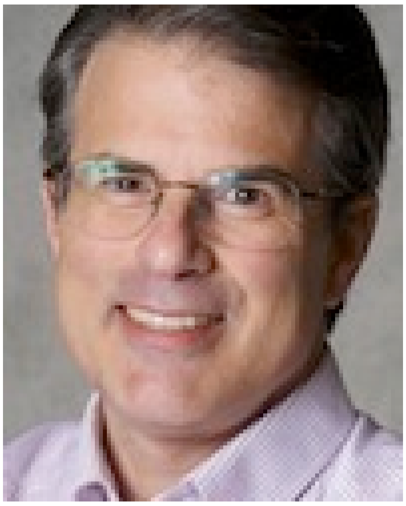
The AAA’s Panel on the SECURE Act

By Kerry Pechter *Thu, Nov 12, 2020*

The American Academy of Actuaries hosted a webinar on the implications of the SECURE Act last week. As one of the panelists, I gave a presentation on the Act's implications for life insurers who hope to market annuities to plan participants.



With Mark Iwry of the Brookings Institution and Greg Fox of Aon, I had the privilege last week of being a panelist in a webinar on the implications of the SECURE Act. The webinar was sponsored by the American Academy of Actuaries. AAA actuary Noel Abkemeier moderated.

The SECURE Act and I have a cautious relationship. When it first appeared, and I saw that it would allow unrelated small companies to “band together” to buy retirement plan services at scale. Somehow that didn’t sound plausible.

I asked a number of knowledgeable people, and they assured me that the Act didn’t mean that companies would band together. It meant that retirement services providers could offer a single plan to many unrelated employers at a time.

So, why did the legislators use the expression *band together*? My sources looked at me blankly. Was I born last night? The wording of all legislation is crafted in such a way, they said. If the legislation said, “The bill will help asset managers and life insurers achieve additional scale in the fragmented 401(k) business by replacing employers as plan sponsors,” it probably wouldn’t pass.

My role on the AAA panel was to report on the implications of the SECURE Act for life insurers. I believe with many others that the Act will be a game-changer for the retirement industry, especially because of the band-together provision, but not necessarily for life insurers—at least, not in the short run.

To be sure, some life insurers with existing ties to the 401(k) business (as plan administrators and recordkeepers) will move quickly into this space. Lincoln, Principal, Prudential and Nationwide, which are life insurers and retirement plan service providers, have already announced new annuity products for this market. (Prudential has continuously marketed its IncomeFlex product for over a decade.) I assume that they’ll market annuities to the plans they administer.

Empower, which still has a Great-West life insurance sibling even after selling its individual annuity business to Dai-ichi’s Protective Life, recently inked a deal to provide record keeping services for Mercer’s PEP (pooled employer plan), Mercer Wise 401(k). MassMutual, whom I expected to play in this space, sold its retirement business to Empower this fall. I have not been able to reach MassMutual for comment.

Some life insurers have already been providing annuities to asset managers that market target date funds. Lincoln, Equitable, Prudential and Nationwide have long attached lifetime income riders to AllianceBernstein’s target date fund (TDF), in a complex framework where three insurers bid each month to wrap their guarantee around contributions from workers invested in TDFs. United Technologies has used the AllianceBernstein program for a decade.

Other TDF providers, like BlackRock, Wells Fargo, and State Street Global Advisors are all assessing the 401(k) market, with varying degrees of development. They’re looking to partner with a life insurer on a TDF/annuity combination. TDFs are essential, because they are Qualified Default Investment Alternatives. Employers can auto-enroll employees into TDFs and, crucially, auto-enroll them into the living benefit rider when they reach, say, age 50.

So far I haven’t heard much from TDF providers like Capital Group American Funds, T. Rowe Price, Fidelity, or Vanguard on this topic. I’m not sure what how they view the opportunities created by the Act. Fidelity has an out-of-plan income annuity purchasing platform on its website, to which its own advisers can send clients.

Vanguard ended the relationship between its 401(k) plans and Income Solutions, the independent platform where retiring participants could solicit bids from several income annuity providers. But Vanguard and Fidelity have big rollover IRA businesses, so they don’t need to steer participants into lifetime income products in order to hold onto their money after they retire.

The SECURE Act has three elements that smooth the road toward incorporation of annuities in 401(k) plans. (Participants in 403(b) plans at non-profit organizations had long had access to group annuities, such as that pioneered by TIAA at colleges and universities.)

The first and most important component is a “safe harbor” that makes clear (somewhat more clearly than in the past) the steps that employers may follow to fulfill their responsibility as fiduciaries to choose a life insurer that is likely to be in business for the long haul. For me, this safe harbor is both too much and not enough.

It's not enough, because it still leaves employers with some fiduciary responsibility (thus perhaps giving them reason to join a PEP). It's also too much. It only requires employers to limit their search to life insurers that have been around for at least seven years and it allows plan sponsors to offer any type of annuity to their participants.

The lawyers for life insurers, who crafted crucial parts of the Act, are presumably satisfied with this language. But if I were a plan sponsor, I'd be looking for a life/annuity company with a 100-year track record.

The other two pro-annuity planks of the Act involve ensuring the portability of annuity contracts and giving all participants access to a lifetime income calculator. Portability allows participants to put their annuities into rollover IRAs when they change jobs. The requirement that plan provider offer participants a calculator that reveals the amount of income that participants' 401(k) current balances would produce today will probably have no effect. Participants ignore disclosures and the income forecaster on the Department of Labor's website already fills the bill.

The Act puts no limits on the kind of annuities that plan sponsors can offer. That's very broad. A Biden administration—Bernie Sanders was asked on a network news program last night if he'd accept an offer to run the Labor Department—is likely to feel the way that the Obama Administration felt about fixed indexed and variable annuities.

The Obama DOL wanted to remove the caveat emptor standard for selling those products to retirement savers. The life/annuity industry defeated the effort in court, but the battle over the "fiduciary rule" has never really ended.

I am a bit skeptical about the prospects of the industry's favorite income product for 401(k) plans. That's the aforementioned TDF with the guarantee lifetime withdrawal benefit (GLWB) rider. The product has great appeal to the industry life insurers and asset managers because it keeps money in the plan (instead of being rolled over to a brokerage IRA) and it provides steady fee income.

But the most important advantage is that participants can be auto-enrolled into the TDF at enrollment and then auto-enrolled into the income rider a decade or more before they retire—and perhaps a quarter-century before they reach age 75 and have to start taking money out of their tax-deferred accounts.

In other words, participants might pay a 1% annual fee for 25 years for a benefit that some people will drop before using it. (The typical in-plan lifetime income benefit allows contract owners to turn on an income stream that can’t shrink unless they make excess withdrawals and that will last as long as they live.) In a fee-conscious 401(k) environment, will many employers commit themselves to that? Some already have, I’m told.

A more consumer-friendly alternative might be something like the SponsorMatch program that MetLife and Barclays Global Investors proposed before the Great Financial Crisis of 2008. It had two sleeves. Employers would contribute their match (say, 3% of salary) to the purchase of a pension-like deferred income annuity for each participant. A participant’s own contributions would go into investments, as they do today. I liked that concept.