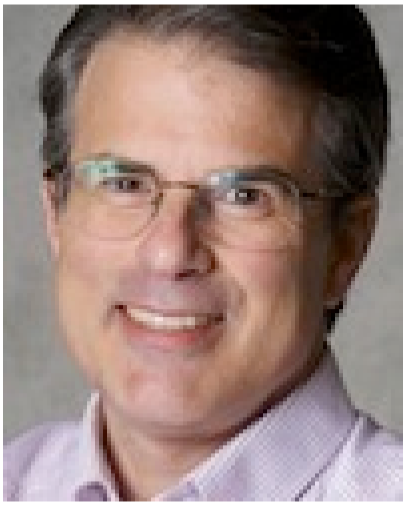
The Big Turnaround in Retirement Policy

By Kerry Pechter *Thu, Aug 9, 2018*

Since November 2016, the direction of retirement policy in the U.S. has reversed. Legislators, not bureaucrats, are in the lead. The SEC, not DOL is in charge of ethics. Industry-led initiatives, not consumer initiatives, are gathering support. It's a dramatic shift.



To the extent that the U.S. has a “retirement policy,” its flavor has definitely changed since Nov. 2016. Given the fact that a business-oriented administration has replaced a consumer-oriented administration, this should not be a surprise. It’s interesting to see who is taking the lead in setting policy today.

For one thing, the pro-Wall Street SEC, not the pro-consumer Department of Labor, is setting the standard for advisor ethics. The Obama DOL aimed to apply the protections and restrictions of the closely-regulated pension world to the tax-deferred IRA world. The SEC seems to tolerate rougher play in the advisory world, and seems satisfied with a caveat-emptor standard that will require consumers to watch out for their own best interest.

Regarding conflicts-of-interest in the advisory world, the Obama DOL tried to sharply reduce them (in part by demanding a written pledge of loyalty to clients from advisors selling variable and indexed annuities on commission) while still allowing business to proceed. For the financial industry, those same conflicts-of-interest—symbiotic relationships between product manufacturers and distributors—are the synergies at the very heart of its business models.

Industry opposition to the Obama fiduciary rule eventually led to its demise at the hands of the Fifth Circuit Court of Appeals. It remains to be seen what the SEC will do. The public comment period for its vaguely-worded “Regulation Best Interest” proposal just ended.

In the retirement income arena, the action has shifted from the executive branch to the legislative branch. Under Obama, the Treasury Department drove the government’s thinking about financial products for tax-deferred accumulation and distribution.

Mark Iwry at Treasury, for example, initiated the *my*RA workplace IRA program for savers at companies without 401(k) plans. He also initiated the Qualified Longevity Annuity

Contract, now offered by a handful of mutual life insurers. It allows people who buy deferred income annuities with a portion of their tax-deferred savings (up to 25%) to defer required minimum distributions on that portion until income begins or age 85, whichever comes first.

That era is over largely over. The newest and most talked-about retirement ideas are bubbling up from the legislative branch. Utah Republican Sen. Orrin Hatch has proposed the Retirement Enhancement and Security Act (RESA) of 2018 and Massachusetts Democrat Rep. Richard Neal is sponsoring the Retirement Simplification and Enhancement Act.

The Hatch bill would allow retirement plan providers to sponsor 401(k) plans and invite dozens of employers to join. The Neal bill would reduce or even eliminate the legal liabilities that are said to deter many small company employers from sponsoring 401(k) plans. There are several other initiatives in the mix as well.

These efforts appear to reflect a spirit of deregulation in keeping with the new administration's preferences. The new initiatives would relax some of the regulations of the Employee Retirement Income Security Act of 1974 (ERISA) and allow plan providers, including life insurers who are also plan providers, to sponsor and design 401(k) plans. If employers do bear less fiduciary responsibility for plan design in the future, insurers might even pre-build income annuities in 401(k) plans. Employers have been resistant to in-plan annuities because of liability concerns.

The Trump administration styles itself as "populist," but the Obama approach to retirement was arguably much more populist, if populism and consumerism are at all related. The *my*RA and the QLAC ideas were aimed at the neediest, with their benefits tailored mainly to the accumulation and distribution challenges of individual lower- and middle-income Americans.

These initiatives offered only mild opportunities for people in the retirement business. By contrast, there's a lot of excitement in the 401(k) industry about the Hatch and Neal bills. Those bills would make the small plan market more accessible to large service providers. Whether they would result in the availability of 401(k) plans to millions of currently uncovered American workers remains to be seen.

The new legislative proposals are said to have a 50% chance of becoming reality, perhaps as part of the next phase of tax reform. Given the gridlock and dysfunction in Washington, D.C.—a city that grows more opulent even as government decays—it's equally possible that these potentially transformative initiatives could get kicked down the road.