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House votes for annuity relaxation but unlikely to pass Senate

Legislation would ease burdens on plan sponsors offering annuities and boost Multiple Employer Plans

Noah Zuss December 21, 2018, 5:53 pm

Retirement legislation passed in the **House of Representatives** this week that could relax rules for plan sponsors to include annuities in 401(k) plans and bring more workers into the US defined contribution system.

It is unlikely that the plans will pass the Senate and have a chance of becoming law, although the moves highlight the likely flavor of political debates on retirement that we will see more of next year.

Currently, employers face legal risks as plan fiduciaries for the selection of lifetime income providers.

The bill relaxes requirements for plan sponsors including annuities in plans by only mandating employers obtain written certification that the insurer is licensed to offer contracts and requiring that the insurer at the time of selection and for seven years prior has been approved to sell these products in the state in which it is headquartered. The insurer must also be in good financial standing, have filed audited financial statements and satisfied reserve requirements for payouts to beneficiaries.

“There’s definitely a push to get some type of annuity in a retirement plan,” **Jeff Snyder**, CEO, **The Morning Pulse**, explained. “The problem is there is no safe harbor that exists, so you are not protected as a fiduciary from being sued if you select this product in the plan.”

Nevin Adams, chief content officer for the **American Retirement Association**, said the lobbyist favors many of the bill’s provisions.

If the bill became law, insurance companies could be big asset winners because – without partnering with an insurer – fund firms can’t offer guaranteed income products, Snyder said.

“Having the safe harbor protection is clearly something the industry really wants,” he argued. “The fund companies quite frankly haven’t come up with a way – they can replicate, to some extent an annuity – but they can’t provide a guarantee because...they are not an insurance company.”

Several large retirement fund providers, such as **Prudential Financial** and **Nationwide**, are also insurers.

The multiple employer and pooled employer provisions in the bill remove “one bad apple” rules for DC plans. This would eliminate the requirement that all employers are disqualified from the MEP or PEP for the actions of one employer.

The new MEP rules would remove the requirement that employers share a nexus or commonality, such as doctor's offices or dry cleaners. This could allow smaller employers to club together under a shared document.

Mandating that plan sponsors include lifetime income statements that parcel monthly, annual income streams in disclosures to participants could also benefit insurers to the detriment of fund only firms.

"Insurance companies are the ones who know how to do that," **Dick Darian**, CEO, **The Wise Rhino Group**, a financial adviser shop focused on retirement assets, explained.

Some non-insurer asset managers including **Fidelity Investments**, **T. Rowe Price** and **Vanguard**, oppose lifetime income disclosures and trade body the **Investment Company Institute** was critical of the lifetime income provision.

"This provision could create confusion for savers, providing an annuity-based income estimate that will be meaningless for the majority of defined contribution plan participants, who do not choose to invest in annuities or have the option to do so," ICI president and CEO **Paul Schott Stevens** wrote in a statement.

He added: "Rather than locking plan sponsors into an annuity-only approach, the legislation must allow sponsors flexibility to continue to use other disclosure methodologies that have successfully served plan participants' need to set and track their retirement goals. That flexibility is critical to protect and encourage future innovation in the lifetime income disclosure space."

Insurers and variable annuity product providers, however, have called the bill "a once-in-a-generation opportunity."

Because the bill was passed during a lame-duck session, just days before the new Congress is seated Jan. 3, it has slim chances of becoming law.

"Right now, it doesn't seem likely that it will pass the Senate," Adams said. "We're hearing that the Senate is focused on the government funding and aren't really focused on the just passed House bill, notwithstanding their interest in getting some of the things done in that bill – including RESA, which continues to enjoy bipartisan, bicameral support, not to mention the full-throated support of the ARA."

Darian said many of the bill's provisions echo earlier efforts at altering the US retirement system to broaden coverage and account for longevity risks so that people save sufficiently and don't outlive their balances.

"Everything you're seeing there in legislation is focused on, I'll call it the front end and the back end mostly, the front end being we don't have enough coverage," he said. "There are millions of small companies that do not cover their employees with retirement plans, so all these bills are being put out to motivate that coverage."

More than 100 million US workers don't have access to a retirement savings plan through their employers, [Fund Intelligence previously reported](#).

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