NATIONAL COUNCIL OF INSURANCE LEGISLATORS
LIFE INSURANCE & FINANCIAL PLANNING COMMITTEE
NEWPORT BEACH, CALIFORNIA
JULY 13, 2019
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Life Insurance & Financial Planning Committee met at The Marriott Newport Beach Hotel on Saturday, July 13, 2019 at 8:45 a.m.

Representative Joe Fischer of Kentucky, Chair of the Committee, presided.

Other members of the Committees present were:

Rep. Martin Carbaugh (IN)
Rep. Matt Lehman (IN)
Rep. Bart Rowland (KY)
Rep. Michael Webber (MI)
Rep. George Keiser (ND)
Sen. Jerry Klein (ND)
Asm. Andrew Garbarino (NY)
Sen. Bob Hackett (OH)
Rep. Tom Oliverson, M.D. (TX)
Del. Steve Westfall (WV)

Other legislators present were:

Rep. Tammy Nichols (ID)
Rep. Deanna Frazier (KY)
Sen. Paul Utke (MN)
Asw. Maggie Carlton (NV)
Asw. Ellen Spiegel (NV)

Also in attendance were:

Commissioner Tom Considine, NCOL CEO
Paul Penna, Executive Director, NCOIL Support Services, LLC
Will Melofchik, NCOIL General Counsel

MINUTES

After a motion was made by Rep. George Keiser (ND) and seconded by Sen. Jerry Klein (ND) to waive the quorum requirement, the Committee unanimously approved the minutes of its March 16, 2019 meeting in Nashville, TN upon a Motion made by Rep. Matt Lehman (IN), NCOIL Vice President, and seconded by Rep. Martin Carbaugh (IN).

ANNUITIES FOR THE 21ST CENTURY

Ann Farley, AVP Innovation Management – Retirement Solutions, at Pacific Life Insurance Company stated that consumer use of technology is growing at an exponential rate and it is hard to go anywhere and not see people using their smartphone. Businesses are starting to change how they operate as a result of that. Pacific Life began a journey to explore the digital world and in 2016, Pacific Life's innovation team began looking at how rapidly changing technology might impact retirement planning.

Ms. Farley stated that when you look at financial services broadly, you are seeing how segments of the industry have gone through digital transformations. Banking and property & casualty insurance are examples of such transformations. In the life insurance industry specifically, there are some product lines that have been making that transition as well. Further, for financial services digital transformation has really created an ecosystem. Consumers have a range of financial services that they can access digitally from information and education to savings, investments, banking, lending re-financing, early insurance needs and robo-type advice. Ms. Farley stated that Pacific Life saw that as an opportunity to look at its entire value chain and re-evaluate what digital transformation could mean for the company and for how products are developed, distributed, serviced, as well as for its existing technologies and procedures surrounding it. Additionally, it was important to re-evaluate how digital transformation would change how the company interacts with consumers. That is a key component for Pacific Life as it does not believe the digital world will fully replace financial professionals. Above all, Pacific Life knew it had to conduct research to provide answers to evaluate the aforementioned issues in order to better understand the digital world.

Ms. Farley stated that Pacific Life conducted qualitative research by talking with financial professionals and consumers, in addition to talking to financial institutions within the digital ecosystem and other digital companies outside the financial services industry. Pacific Life wanted to understand how digital was changing or impacting financial professionals, consumers, and businesses looking for retirement planning. Ms. Farley stated that as a result of synthesizing all of its research and the insights gained, Pacific Life concluded that the best way it would learn the digital world is to build something within it and start to explore it.

Ms. Farley stated that Pacific Life started to explore what digital intermediary partners might make sense for the digital space. Pacific Life spent time thinking about product solutions and what they might look like if built for the digital platform; as well as what new product concepts might be explored and what, if anything, would be different about them. Further, Pacific Life started to explore, craft, and test the digital end-to-end experience. For example, how would purchasing and applications be fully digital and what might be different in servicing clients in digital ways? What could we learn about the technology systems we are going to need and how they are structured in order to integrate with other digital partners?

Ms. Farley stated that after about a year of research, Pacific Life identified Blueprint Income as its initial digital distribution partner. Blueprint Income is an online consumer marketplace for fixed and income annuities. Blueprint Income allows customers to compare products, check rates, and purchase products online. Their digital-first mindset made them a perfect partner for Pacific Life to explore integrating into the digital world. Ms. Farley stated that Pacific Life built a deferred income annuity with a lower purchase payment of $100 which is what Pacific Likes to think of as "subscription style" which means that a customer can set up monthly recurring payments for $100 or more. The product was also designed to be flexible so customers could increase that amount, decrease it, stop it, start it again, or add one-time payments if needed.

Ms. Farley stated that digital end-to-end experience was built so that the application and purchase process could be completed on-line. In December, "Next by Pacific Life" (Next) was launched and the main thing to take away from it is that valuable insights will be able to be obtained from being in the digital world which can then be applied across the enterprise to core markets. Ms. Farley stated that the sub-brand Next was created as a way to make a distinct entrance into the digital financial ecosystem but at the same time stay aligned to the strength and recognition of the Pacific Life brand.

Ms. Farley stated that additional products will be added to the Next platform as Pacific Life wants to support the protection and retirement needs of consumers over the course of their lives. Pacific Life's life division is currently working on a pilot it recently launched on a term-life product that will become part of the Next platform. Ms. Farley stated that the future vision for Next is to further become part of the digital financial ecosystem as Pacific Life believes that future consumers will have the traditional avenues of working with financial professionals like the ones Pacific Life currently partners with in its core businesses as well as more digital avenues to utilize. For Pacific Life that means continuing to support and provide products for its traditional financial service partners and professionals and provide outstanding service for its clients. Next will continue to explore new digital distribution avenues that provide that same support for financial professionals and their clients in the digital space. Pacific Life wants to expand the products that it offers digitally and take its core service strength and master that in the digital world. The long term goal is to, in this changing and increasingly digital world, show up where financial professionals and clients are having their retirement and financial planning conversations and decisions. Whether it is in the traditional or digital financial planning avenues, Pacific Life wants to be there for those moments and support them on their journey.

UPDATE ON FEDERAL RETIREMENT SECURITY LEGISLATION – THE SETTING EVERY COMMUNITY UP FOR RETIREMENT ENHANCEMENT (SECURE) ACT AND THE RETIREMENT ENHANCEMENT AND SAVINGS ACT (RESA)

Elizabeth Kelly, SVP of Operations at United Income, stated that United Income is a new FinTech company that aims to use technology to provide more wholistic and personalized financial planning and investment management targeted at individuals nearing or entering into retirement. United Income strives to help its clients build wealth by minimizing taxes, increase government benefits, generate higher equity premiums and provide more personalized advice through high performance computing. Ms. Kelly stated that before she joined United Income she spent three years as Special Assistant to the President at the White House National Economic Council where she oversaw retirement and pension policy.

Ms. Kelly stated that she worked on the SECURE Act in 2016 and is just now is finally moving through Congress. On May 23, 2019 the U.S. House of Representatives passed the SECURE Act with an overwhelming bi-partisan majority of 417-3. The SECURE Act mirrors RESA which had passed the Senate Finance Committee in December of 2016 and was reintroduced this year by Senators Grassley and Wyden, the Chair and Ranking Member of the Senate Finance Committee. If passed, the SECURE Act would be the most significant legislative change to defined contribution plans since 2006 when the Pension Protection Act made it easier for companies to automatically enroll their workers in 401(k) plans. With that context, Ms. Kelly stated that her remarks would focus on providing an overview of the SECURE Act, including areas where there may be some pushback or disagreement, the legislative prospects for the bill, and a quick overview of other legislation out there that intersects with the SECURE Act.

Ms. Kelly stated that problem the SECURE Act is trying to solve is that older adults are living longer – a trend that will continue. By 2040, someone who makes it to age 60 will be expected to live, on average, another 28 years. Yet American men are still retiring around the same age of 64. While Americans will need more money - about 49% more than 20 years ago – the personal savings rate has fallen to about 6%. The net-net is that American households in many cases are not saving adequately for retirement and about half of retirement-age households will rely almost exclusive on Social Security and Medicare to pay for their retirement.

Ms. Kelly stated that the SECURE Act aims to solve or at least help address that problem in three primary vectors. The first is to increase access to workplace retirement savings plans. The second is to reform contribution and withdrawal rules in response to increasing longevity. The third is to increase the take-up of annuity and lifetime income products. The vast majority of the SECURE Act's provisions fall into one of those three vectors.

With regard to efforts to increase access to workplace retirement savings plans, the best way to get people to save is to offer them a workplace savings plan like a 401(k) and to automatically enroll them in that plan. However, approximately 1/3 of private sector workers do not have access to a workplace retirement savings plan. Among companies with fewer than 100 employees, 47% lack said access. The SECURE Act's primary mechanism for increasing access to workplace retirement plans is through the allowance of open multiple employer plans (MEPs). The rational behind open MEPs is that small employers are less likely to offer workplace plans in part because of the higher per-worker cost as well as lack of expertise, administrative overhead, and the need to focus on their core day-to-day business activities. Currently, small employers are not able to band together and create a shared 401(k) plan because current law requires that the employers have a common bond. The SECURE Act would get rid of the common bond requirement and would allow small businesses to band together to create open MEPs. Employers will be able to delegate important fiduciary-like responsibilities such as plan investments to the pooled provider or another fiduciary that would still be required to act prudently and loyally in selecting and monitoring the MEP.

Ms. Kelly stated that it is generally anticipated that open MEPs will really only move the needle in terms of increasing coverage if entities other than employers like asset managers, record keepers, and plan advisors – so-called "pooled plan providers" – will offer ERISA-governed open MEPs and market them to small businesses. There is some concern about the trade-off between greater financial incentives to work to expand coverage, and protecting workers against conflicted investment advice, high fees, and expenses, but Ms. Kelly stated that there has been general bi-partisan agreement that open MEPs are a good way to increase small business offering of plans and getting more workers to save. President Obama proposed open MEP legislation in his FY 2017 budget and the Department of Labor (DOL) is currently working on similar regulations pursuant to President Trump's August Executive Order.

Ms. Kelly stated that there are two other provisions in the SECURE Act that aim to increase access to workplace retirement savings plans, both of which were also in the aforementioned Obama budget. The first is a tax credit for small employers to defray the costs of offering a workplace retirement savings plan with an additional tax credit if they include automatic enrollment. There is also a provision enabling long term part-time workers to contribute to their employer's workplace retirement savings plan. Under the bill, any employee who has worked for at least three years and at least 500 hours a year could participate in a workplace retirement plan if offered by their employer.

Ms. Kelly stated that with regard to changes in the contribution and withdrawal rules, the SECURE At would allow older Americans still in the workforce to continue making tax-deferred contributions to traditional IRAs after age 75 rather than just post-tax contributions to Roth IRAs and brokerages. While that is intended to help older Americans who are still working and respond to increasing longevity, it is a relatively small percentage of the population. About 14% of the population ages 71-80 report being in the labor force according to the latest labor population survey. On the withdrawal front, the legislation would increase the age at which older Americans must start making RMDs from 70.5 to 72 years old. This makes sense given that life expectancy has increased substantially since the 1960s when the 70.5 threshold was put into place. There is bi-partisan agreement that the RMD rules need to change as it was in the Obama budgets and in President Trump's Executive Order.

Ms. Kelly stated that the bill would also raise revenue some $16 billion dollars over the next decade according to the Joint Committee on Taxation by requiring inheritors of 401(k) plans and IRA balances to withdraw the entirety of that balance within 10 years of the account owner's death. That is the so-called "stretch IRA" provision and is popular among tax wonks and policy professionals, many of whom believe that tax-preferred retirement savings should be used for retirement. However, the provision is very unpopular among financial planners and others who have helped families choose the estate planning provision.

Ms. Kelly further stated that there are efforts in the bill to increase annuity take-up. The SECURE Act would protect defined-contribution plan sponsors and other fiduciaries from potential liability under ERISA for their selection of a lifetime income provider for their plan. There has been general agreement that small businesses are not really equipped to assess whether or not an insurance provider has the financial solvency to be able to make payments many years in the future and it does not make sense to allocate that burden to the individual which is what the SECURE Act seeks to take away. However, there has been some pushback on the scope of provision. For instance, it is not limited to the selection of the annuity carrier as it also extends to the selection and negotiation of contract terms like cost that a small business could perhaps take on. Additionally, it covers a broad range of products – not just fixed income annuity contracts but also variable and other types of annuities.

Ms. Kelly noted that there is also a provision regarding disclosure on lifetime income. The SECURE Act would require benefit statements given to 401(k) participants to include a lifetime income disclosure at least once during the 12 month period. The idea is that the plan participant could see what their total account balance would be in terms of a lifetime income stream both for a qualified joint survivor annuity, single life annuity and other different forms.

With regard to the bill's prospects, Ms. Kelly stated that she does not have a crystal ball and even Senator Grassley, the Chair of the Senate Finance Committee, when asked about the timing stated that "I wish I could give it to you." The expectation had been that the SECURE Act, after having passed the House would pass the Senate on unanimous consent but it is actually being held up by Senator Cruz and some other members over a provision allowing 529 accounts to be used for homeschooling, private elementary and high school expenses. That provision was included in earlier versions of the House bill but was removed by Democrats at constituents' requests. Because of the opposition to move forward the SECURE Act without that provision it is unclear if the Senate will be able to pass the bill on unanimous consent. The second option would be a very short debate and amendment process but it seems unlikely that Leader McConnell would bring it up under those circumstances because of the desire to not open up other issues. The last possibility would be to attach the SECURE Act to another piece of legislation, such as legislation regarding the debt ceiling in September, end of year appropriations and whatever else happens to move through the Senate.

Ms. Kelly stated that if the SECURE Act is part of an end-of-year deal, there are other pieces of retirement legislation on the Hill which might be incorporated. RESA is largely identical to the SECURE Act. Senator Wyden has also pushed the Retirement Parity for Student Loans Act which is also included in a Portman-Cardin bill. Essentially, it would allow employers to make matching contributions to a retirement plan while their employees make student loan repayments. The idea is that millennials are not able to contribute to their retirement plan because they are making student loan payments and should not lose the employer match that older employees are able to benefit from. That is a widely popular provision because when members go home oftentimes they are asked about student loans and healthcare and being able to include something that addresses the student loan problem as part of a broader retirement effort would likely be very popular. Ms. Kelly stated that parts of the Portman-Cardin bill could advance such as increases in the catch-up contribution limit from $6,000 to $10,000 for those over 60 years old, expanding the “saver’s credit” for low income savers, and further changes to the RMD rules as there is debate over whether the SECURE Act’s RMD provisions go far enough. There is some support for raising the RMD age to 75 and even eliminating it for individuals with very low retirement savings balances. Ms. Kelly noted that the Kloubchar-Coons sponsored Savings for the Future Act is unlikely to see any action.

Bruce Ferguson, Sr. VP of State Relations at the American Council of Life Insurers (ACLI), stated that as we sit here today an additional 10,000 Americans will reach the age of 65 and that will happen each and every day between now and 2030. As we think about that retirement population, many of them might expect to live 25 or more years in their retirement years and there are a lot of very important studies which state that individuals are woefully under-saved for retirement. From the policymaking perspective, that has an effect on state budgets and the demand for public services will only increase unless there are some important steps taken at the federal level and in individual states to help individuals plan for their retirement years.

Mr. Ferguson stated that as he looks at the group of legislators present, he sees many small business owners who certainly understand the pressures of meeting payroll and trying to attract and keep talent. In terms of trying to attract and keep talent, retirement planning is something that will be at the forefront of perspective employee’s interests. From a business owner perspective, in addition to meeting that interest, you also have to consider taxes and mandates and when taken together it can be a struggle. Some of the SECURE Act’s key provisions are designed to provide some support and relief to small business owners. The idea of open MEPs has been in existence in other countries for many years and is something that should be seriously looked at as it would provide the economies of scale for small businesses as they look to make efficiencies with the administration process. In ACLI’s estimation, all of that could lead to an estimated 700,000 workers with access to workplace retirement savings plans that they don’t now enjoy.

Mr. Ferguson also noted the SECURE Act's provisions allowing for a $5,000 credit that would be provided to small employers for establishing a plan. When struggling to make ends meet in running a small business, that type of startup credit would be very helpful. An additional $1,500 credit could also be provided for auto enrollment to a new or existing plan which is another incentive for establishing or enhancing a retirement workplace plan. There is always the opportunity for an employee to opt out if they are not in a position to save through the workplace but evidence suggests that through auto enrollment we will see more individuals choose to plan for their retirement years. The current annuity selection safe harbor allows for more information so an employer can understand and provide to employees the information that they need when it comes to reflecting the status in relation to the state insurance regulation and enforcement of the company that they are choosing to do business with.

Mr. Ferguson stated that lifetime income disclosure is something that is very important to improve financial literacy. An illustration provided to individuals showing how their account balance translates into monthly lifetime income during their retirement years is very valuable as we think about low to moderate income savers who would be the prime beneficiaries of the SECURE Act. That type of basic information will go a long way toward helping individuals plan for their retirement years. Providing lifetime income portability is another key aspect of the SECURE Act.

Mr. Ferguson noted that Senator McConnell has established a procedure called a hot-line vote which is a vote done by consensus rather than moving it to the floor for debate. If consensus is not reached, the SECURE Act could easily get caught up in the 2020 Presidential election and no action could be taken until afterwards. July is the key month for something to happen and ACLI has sent a group of CEOs to meet with Senator McConnell in an effort to advance the bill particularly given the bi-partisan support it has.

Rep. Joe Fischer (KY), Chair of the Committee, thanked Ms. Kelly and Mr. Ferguson for their presentations and said that as someone who is approaching age 65, the issue of retirement security is very important to him. Rep. Fischer then asked for the names of the three Senators who voted against the SECURE Act. Ms. Kelly stated that it is her understanding the Senator Cruz is the primary opponent and his longtime Chief of Staff is one of the Representatives who voted against it. Ms. Kelly stated that she would have to check who the other two House members were that voted against it.

Rep. Martin Carbaugh (IN), Vice Chair of the Committee, asked with regard to the RMD age being increased from 70.5 to 72, if the schedule moves with it. In other words, the dividing factor at 70.5 right now is 27.4 and at 72 is 25.6 so you gradually have to take a higher percentage out. Accordingly, would you have to take out 27.4 at age 72? Ms. Kelly stated that she believes the schedule does move along with the increase in age.

Rep. Carbaugh then asked with regard to the matching student loan provision referenced by Ms. Kelly, how is that different than being able to make voluntary contributions for everybody without the requirement of a contribution? Ms. Kelly stated that is a provision proposed by Senator Wyden and is not yet part of the SECURE Act. Ms. Kelly further stated that she believes the hope is that this will provide an additional nudge to employers to in fact make contributions as the number of employers having made voluntary contributions is small. Rep. Carbaugh then asked if the 529 provision is the lynchpin for Senator Cruz. Ms. Kelly replied yes. Rep. Carbaugh asked if the 529 provision allows that money to be used to repay student loans. Ms. Kelly replied yes and that has not been taken out of the SECURE Act. Rep. Carbaugh stated that he agrees with what Senator Cruz is trying to do regarding the 529 provisions but hopefully the entire bill will not die in the process.

Senator Bob Hackett (OH) referenced the SECURE Act's provision requiring inheritors of 401(k) plans and IRA balances to withdraw the entirety of that balance within 10 years of the account owner's death and asked if inherited IRAs are essentially being eliminated. Ms. Kelly stated that under the bill as currently crafted you can inherit the IRA and there are not the same limitations on when you have to make withdrawals. Under the bill you would have to withdraw the entirety of the IRA balance within 10 years of the primary holder's death if you are not a spouse or minor child – so the effect would be to limit but not eliminate inherited IRAs. Sen. Hackett stated that will have the effect of adults aged 40 to 50 of being forced to take the money out within 10 years or pay the 10% penalty on top of paying taxes on the withdrawal. Sen. Hackett stated that the inherited IRA has been a godsend. Ms. Kelly stated that there has been staunch opposition to that provision. Sen. Hackett stated that in his mind they are looking for a way to pay it but they should be patient as every IRA has to have tax paid so all they are doing is pushing up to a time where the IRA will be taxed. That will create a hardship on adult children that are aged 40 to 50. Ms. Kelly noted that this provision was not included in RESA and has been added within the past few months.

Rep. Tom Oliverson, M.D. (TX) asked why the homeschooling provision is so controversial as it should not be a problem to members of Congress if people want to utilize their 529 contributions for such purposes. Ms. Kelly stated that she believes Senator McConnell will be sympathetic to that provision but he is also governed by Senate rules and if he adds in a provision that was not in the House bill then it is difficult to move the bill by unanimous consent because they are not able to change the wording of other things.

ADJOURNMENT

There being no further business, the Committee adjourned at 10:00 a.m.