



AMERICAN ACADEMY of ACTUARIES

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September 11, 2019

The Honorable Preston Rutledge
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Assistant Secretary Rutledge,

The Lifetime Income Risk Joint Committee of the American Academy of Actuaries,¹ has read with interest the report of the ERISA Advisory Council (EAC), *Lifetime Income Solutions as a Qualified Default Investment Alternative (QDIA)—Focus on Decumulation and Rollovers*, and we are generally supportive of the three recommendations being made. There are several comments we would like to offer in order to address some issues that might aid in the provision of lifetime income within defined contribution (DC) plans, such as 401(k)s.

The first set of EAC recommendations addressed the inclusion of certain lifetime income options in a QDIA. One of the items was to “address the extent to which charges may be imposed if they have the effect of limiting liquidity and/or transferability.” We recognize that this might be most applicable to fixed-income annuities. We suggest that you consider how charges might be mitigated. Examples include brief free-look periods or a trial annuity under which withdrawals are made for a period, such as a year, before irrevocable annuity payments begin.

The second recommendation of the EAC addresses “confirming that a named plan fiduciary may appoint a 3(38) investment manager to select and monitor annuity and other [lifetime income] providers.” There has been a reluctance for DC plan providers to utilize insurers due to concerns that they have fiduciary liability for the selection of insurers. It is possible that the selection of 3(38) investment managers would cause the same fiduciary concern. This can be particularly problematic for smaller employers that may not have the expertise needed in this selection process. Consideration needs to be given to the special needs of smaller plan sponsors. With respect to the selection of insurer concern, current guidance describes a process for evaluating an insurer; however, it leaves many plan sponsors still concerned about their fiduciary liability. The

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Setting Every Community Up for Retirement Enhancement (SECURE) and Retirement Enhancement and Savings (RESA) acts being considered in the U.S. House and Senate, respectively, would set an evaluation standard based on life insurer statutory reporting criteria. These criteria set a low bar and still might not provide plan sponsors the assurance that the insurer is sufficiently strong and that their participants would be sufficiently protected. A higher requirement based on insurer ratings might be more appropriate, such as requiring at least two ratings in the top three grades (e.g., A- and above).

The third EAC recommendation is that the “Department should encourage plan sponsors to adopt plan design features that facilitate [lifetime income], including, but not limited to...” There is no overt mention of annuity options with the other good approaches, although “not limited to” could imply their inclusion, and we feel they should be included in any considerations. The “encouragement” that is suggested could be in the form of regulations and safe harbors. We address this in our position statement, [*Retirement Income Options in Employer-Sponsored Defined Contribution Plans*](#) that we released in October 2017.

Finally, a critical issue for achieving the results recommended by the EAC is education of participants to help facilitate sound retirement planning choices. We believe your considerations should include a safe harbor for educating participants, because this step is so critical and plan sponsors have fiduciary concerns on the topic.

We would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments if you wish. If you have any questions or would like to discuss further, please contact Linda Stone, the Academy’s senior pension fellow, at 202-223-8196 or stone@actuary.org.

Sincerely,

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