DCIIA/SPARK 2021 Public Policy Series: Virtual Conference Summary

May 2021 – Domestic Themes

Contributors

John Mitchem, JM3 Projects

Karen Witham, DCIIA

In May and June 2021, more than 800 members and guests registered to attend the second-annual DCIIA/SPARK Public Policy Series, coming from 25 states and 13 countries (Australia, Canada, China, France, Germany, Hong Kong, India, Luxembourg, Netherlands, Slovenia, South Africa, USA, UK). The event series featured almost 90 expert speakers from around the world.

Following is a recap of the May event, including agendas and descriptions of key themes that emerged. We also invite members to access session replays, related slide decks, speaker details and more on our website – look under Events / DCIIA/SPARK 2021 Public Policy Series. Sessions included:

DAY ONE

Opening Remarks: Joan McDonagh, Empower Retirement

20th Anniversary of EGTRRA & Presentation of the Retirement Security Champion Award
Speaker: Ralph Ferraro, Lincoln Financial Group

The 117th Congress: What's in Store for Retirement Plans?
Key Congressional staff share their priorities and predictions for Secure 2.0 and other retirement legislation.
Speakers: Kara Getz, US House of Representatives; Ron Storhaug, Office of Senator Ben Cardin; Michael Sinacore, Office of Senator Portman; Kendra Kosko Isaacson, Senate HELP Committee; Drew Crouch, Senate Finance Committee; Chris Gaston, Davis & Harman (Moderator)

What's on the Policy Shopping List with a New Administration? This panel explores a policy shopping list considering priorities and tradeoffs.
Speakers: David C. John, AARP; Karen Friedman, Pension Rights Center; Gene Steuerle, Urban Institute; Lew Minsky, DCIIA (Moderator)

Minding the Gap: Democratizing U.S. Savings
This session takes a fresh look at the retirement savings gap and breaks down the challenges and problems.
Speakers: Fred Makonnen, EQUITABLE; Karen Biddle Andres, The Aspen Institute Financial Security Program; Katie Selenski, CalSavers; Michael Andeberhan; MSCI (Moderator)

Are PEPs the Future of Retirement Plans?
This session addresses legal and practical implications of the PEP concept and the impact of emerging litigation against multiple employer plans.
Speakers: Brad Campbell, Faegre Drinker Biddle & Reath; Melissa Drennan, NTCA-The Rural Broadband Association; Lia Mitchell, Morningstar; Dan Basile, Ascensus (Moderator)

Cybersecurity and Fraud: This panel covers three areas important in protecting plans and participants from fraud.
Speakers: Jason Honey, Fidelity Investments; Les McCollum, ICMA-RC; Mark Strosahl, Principal; Stephen Budinsky, RVK (Moderator)

DAY TWO

Opening Remarks: Michael Kreps, Groom Law Group

Designing Effective Legislation to Expand Access to Retirement Savings and Income
This panel discusses initiatives at the state and federal level to improve retirement security.
Speakers: Angela Antonelli, Georgetown University; Nicholle Taylor, SS&C Technologies; John Scott, The Pew Charitable Trusts; Catherine Reilly, Smart USA (Moderator)

Expanding Workplace Savings – Seeking a Holistic Lifelong Approach: An exploration of the tools and savings opportunities available to employees and the impact that better design can have on employee outcomes, retention, and plan sponsor ROI.
Speakers: Shai Akabas, Bipartisan Policy Center; Liz Davidson, Financial Finesse; G. Alisa Ferguson, Virginia529; Sharon Scanlon, Lincoln Financial Group (Moderator)

A Conversation with Retirement Regulators
Key government officials discuss regulatory priorities.
Speakers: Ali Khawar, Employee Benefits Security Administration; Rachel Leiser Levy, IRS Chief Counsel, Melissa Kahn, State Street Global Advisors (Moderator)

How to Engage with Policy Makers: Candid conversations about how to engage with DOL/Treasury and Congress.
Multiple moderators.

DAY THREE

Opening Remarks: Rachel Barry, BlackRock

The Code Breaker – What to Expect When You're Expecting (Litigation): Defense and plaintiff's counsel discuss pertinent issues for plan sponsors to consider in the current ERISA litigation environment.
Speakers: Alison Douglass, Goodwin Procter; Mark Boyko, Bailey Glasser; David Pulford, Formerly with American Airlines (Moderator)

Impact of COVID on DC Savings: This session explores how the CARES Act was flexible and savers kept their heads as well as providing insights on the impact of COVID on investment markets.
Speakers: Sarah Holden, Investment Company Institute; Sasha Franger, Empower Retirement; Catherine Saunders, Putnam Investments; Rob Austin, Alight Solutions (Moderator)

State Data Privacy Laws and Retirement Plans: A discussion about recent changes to state data privacy laws, what's on the horizon for this dynamic field of law, and how existing and future laws may impact the industry.
Speakers: Kevin Walsh, Groom Law Group; Karen Nash-Goetz, T. Rowe Price Associates.; Ben Taylor, Callan (Moderator)

Missing Participants: DOL Has Spoken – Now What?
This session explores DOL "best practices" and how the industry can help plan sponsors establish a successful process. Industry providers discuss the practicality of finding missing participants and how policy makers can assist.
Speakers: Elizabeth Goldberg, Morgan, Lewis & Bockius; Spiro Preovolos, PenChecks Trust; Levina Mehta, Bechtel Global Corporation; Rachel Kugelmass, Conduent HR and Learning Solutions (Moderator)

The Arc of Technology Within Our Industry: This session explores how technology has evolved to serve the needs of plan sponsors and participants and how that technology continues to adapt.
Speakers: Bill Stone, SS&C Technologies; Tim Rouse, SPARK Institute (Moderator)

INTRODUCTION

The May 2021 virtual event examined what many believe will be a critical inflection point in the evolution of US workplace savings plans. The combination of a new administration and Congress in Washington, together with the COVID pandemic, shutdown, recession and recovery has focused industry minds and accelerated trends in policy, practice and technology. The defined contribution (DC) savings industry demonstrated notable resilience amid this market volatility and accelerated its consideration of many best practices that bode well for the future.

POLICY AND REGULATION

Senators Rob Portman (R-OH) and Ben Cardin (D-MD) stressed that across their 20 years of collaboration in Washington, retirement-focused legislation had routinely garnered bipartisan support. Broadly shared goals include expansion of workplace savings coverage to small business, to low- and moderate-income workers and to part-time and contingent workers. They stressed that 2021 would likely be a year of notable retirement legislation enjoying bipartisan support.

Policy strategists at the conference focused on pending initiatives – student loan matching in the workplace, reform and expansion of the saver's credit (perhaps including refundable tax credits), establishment of regulatory "neutrality" for ESG investment and new Department of Labor guidance on cybersecurity best practices.

Washington policymakers are expected to expand auto enrollment, building on behavioral finance innovations that have infused plan engagement ever since the passage of the Pension Protection Act (2006). Speakers noted that auto-enrollment includes something for everyone across the political spectrum. Conservatives like that plan participants are empowered with options that they can control. Progressives celebrate the inclusion of more workers into plans. Libertarians like the fact that workers can engage or opt out of plans as they see fit.

Several speakers noted that draft regulation and legislation had been developed that would foster the creation of emergency cash savings accounts within ERISA-regulated savings plans. They noted that health savings accounts (HSAs), tax-advantaged medical savings plans available for workers enrolled in high-deductible health plans, had grown steadily since their introduction via the Medicare Prescription Drug, Improvement and Modernization Act (2013).

Sustainable investing and environmental, social and governance (ESG) strategies in workplace plans have been subjected to policy "ping-pong" in recent years. While plan participants and sponsors generally endorse ESG options, care must be taken that these investments don't run afoul of fiduciary obligations to maximize returns.

Lifetime income is one of the most discussed financial product strategies of recent years, particularly given that 70 million American baby boomers are retiring with many trillions of dollars' worth of accumulated savings. No other generation has retired with this volume of accumulated wealth. The SECURE Act (2019) introduced three major provisions in this area – the inclusion of lifetime income projections in benefit statements, fiduciary safe harbor for plan sponsor selection of lifetime income providers and the inclusion of savings plan provisions around lifetime income portability as workers change jobs. While no bill is pending in Congress, 2021 is expected to see robust bipartisan interest the inclusion of lifetime income strategies as part of qualified default investment alternatives (QDIAs).

Conferees urged that workplace savings strategies not be considered in isolation and that they factor in Social Security and Medicare as well as broader issues such as wealth inequality, pay equity, gender/ethnic bias and the challenge of saving for retirement while simultaneously paying down student loans.

Speakers also explored policies around plan portability, a mechanism for the automatic aggregation of "lost" savings accounts, elimination of plan "leakage" as workers changed jobs and the concept of a "reverse match", by which employers could voluntarily contribute to worker savings plans, with workers providing a "match" for this contribution.

MARKET DEVELOPMENT AND EXPANDED COVERAGE

Noting that 401(k)-style plans work very well and are popular with both plan sponsors and participants, many cited deficits of "coverage" as the system's principal shortfall. An often-cited question raised around the challenge of long-term market development is the question of mandates. The American workplace savings system has traditionally been purely voluntary. But many wonder whether firmer "nudges" or legal requirements might be needed to "move the needle" on coverage.

Some conference panelists were categorical – that meaningful expansion of workplace savings coverage would only result from a federal government mandate. "Shoveling" additional subsidies and tax credits – including refundable tax credits – wouldn't do the job.

Many states, including Oregon, Illinois, California, Virginia and New York, have initiated auto enrollment IRA workplace savings plans for workers that do not have access to a 401(k) or similar type savings vehicle. Several other states are initiating these non-ERISA-regulated auto-IRAs.

These plans can't be considered fully "mandatory" since individual workers can opt out and employers are only required to provide account information to the savings organizations, who auto-enroll the workers in plans managed by private financial service providers. The policy challenge is in balancing the desire to expand coverage while protecting the demonstrably successful – and thus far fully voluntary – system of 401(k)-type private workplace savings. While many policy advocates urge the establishment of a national auto-IRA program, perhaps including mandatory auto-enrollment, this seems unlikely in the medium term.

The workplace savings industry is embarking on a fundamental restructuring with the introduction of pooled employer plans (PEPs) and open multiple employer plans (MEPs) which were introduced into the workplace savings mix through the adoption of the SECURE Act (2019). MEPs are widely considered to be the most fundamental plan innovation since the introduction of auto enrollment and QDIAs via the Pension Protection Act (2006).

The industry does not have a firm sense of which kinds of companies (in terms of scale, market maturity, industry sector or region) might enroll in MEPs. The preponderance of enrollment is expected to come from smaller companies that currently sponsor 401(k)s, but struggle with administration and fiduciary risk management. It's still to be determined whether small companies that have never offered plans would "step up" to MEPs or whether larger firms with robust 401(k) plans would opt out of sponsorship and pass those responsibilities to a pooled plan provider (PPP).

Given that this market has barely begun, it is difficult to measure where cost and administrative thresholds might be found, or even to gauge the economics of being a PPP. What sort of firms might play this role? Among the suggestions were third-party administrators (TPAs), advisors, recordkeepers, payroll providers or specialty pension consultancies. The Department of Labor has issued little guidance, other than the fact that PPPs will serve as both fiduciaries and plan sponsors. Little is known about the regulatory regime that will eventually govern MEPs.

The principle of pooled plans suggests economies of scale, access to well-priced investment products, streamlined administration and a workplace savings market in which companies and PPPs can focus on their core competence – managing their business and managing savings plans, respectively.

A persistent challenge regarding workplace savings coverage is that a disproportionate share of workers without access to plans are female, ethnic minority, lower income, employed in small business and/or employed as either part-time or contingent labor. It was noted that this retirement savings coverage deficit overlaps with broader deficits in wages, wealth and home ownership in these same cohorts of workers.

Workers with access to a plan are 15 times more likely to save for retirement than those without; fully 50 million American workers lack this access. Panelists described workplace retirement savings access as a critical objective for disadvantaged workers that have been "losing ground" economically – working for wages that have not risen in a generation while missing out on the appreciation of home prices and capital market securities.

PLAN DESIGN, ADMINISTRATION AND TECHNOLOGY

Retirement savings plans seem to be migrating beyond retirement. Conference panelists noted that individual workplace savings plans have been experimenting with other types of savings and that the industry is anticipating regulatory guidance to help further this trend. At some organizations, workers can save for emergency expenses, healthcare and education alongside retirement. This expanding menu of savings options is often cited under the rubric of "financial wellness" – a broad view of financial health, defined by preparation for essential life expenses and a sense of personal ease, confidence and reduced stress.

Family finances and savings are, in some sense, a zero-sum game with healthcare, education, housing, retirement savings and out-of-pocket spending competing for earnings. Employee benefits studies have made clear that workplace savers burdened by competing expenses – and debt – save less for retirement.

Emergency expenses can be particularly corrosive, leading some savers to divert cash from long-term retirement plans to short-term emergency expenses. This has led to a thriving policy debate over the establishment of contingent liquidity, "sidecar" accounts. Conference panelists cited a simple cash emergency savings structure built into the National Employment Savings Trust (NEST) in the United Kingdom. In these savings plans, wage deferrals are tipped first into the emergency saving "jar" before cascading into long-term savings accounts. When workers tap the short-term savings jar, subsequent wage deferrals replenish the jar before cascading once again into the long-term account.

A tangible step toward broadening workplace savings has been recent regulatory guidance allowing employers to "match" student loan paydowns with contributions into worker retirement plans. Proposed "SECURE 2.0" legislation in Washington would treat student loan payments as "selective deferrals", thereby granting legal certainty to this practice.

An example of savings plan evolution can be found in the area of tax-advantaged "qualified tuition plans" sponsored by state agencies and educational institutions and governed by section 529 of the Internal Revenue Code. These "529 plans" started out as prepaid college tuition plans, and then evolved into savings plans. But 529s today are also being used to pay for registered apprenticeships, to pay down student loans and in the future may be used for K-12 education expenses and even off-campus housing for university students.

THE IMPACT OF COVID

In a panel examining the behavior of workplace savers amid the COVID pandemic, market correction and economic shutdown, it was noted that the vast majority of U.S. workplace savings plan participants "held the line." They didn't stop saving, reduce their deferrals or change allocation strategies.

Most importantly, only a small number took early withdrawals, despite a temporary suspension of early withdrawal penalties granted by the U.S. government. Effectively, workers did nothing. In a robust recovery after the initial COVID stock market correction in March 2020, the S&P 500 reached a record valuation in September and continued climbing well into 2021. Marooned by the lockdown and foregoing normal spending, Americans' savings rates rose dramatically, reaching a four-decade high. As of April 2021, U.S. retirement financial assets under management were up 10 percent over year-end 2019.

Interestingly, this resilience was seen across the full range of demographics. For those who have wondered whether workplace savers could be "trusted" to manage their financial affairs amid market volatility, two things were made clear. First, workplace savers understand dollar-cost-averaging. When markets went down, they continued investing as before. This a testament to their resilience, but also to the power of behavioral defaults in savings plan design.

Secondly, the COVID volatility once again underscored the criticality of professional financial advice. Workplace savers look at their accumulated retirement "nest eggs" as a last resort for spending and advisors play a key role in buttressing this determination. Finally, the COVID markets made clear the crucial role of patient, long-term retirement savings to capital market recovery. In times of market volatility, the long-term allocation and dependable replenishing of payroll savings plans serve to stabilize the entirety of U.S. capital markets.

CLOSING THOUGHTS

All over the world, pension policies are closely regulated and considered strategic assets at the heart of national economies. In the United States, market competition among workplace savings plan servicers and managers has consistently spurred innovation and the evolution of new best practices. Systemic evolution in the $20 trillion market for 401(k)s and IRAs has consisted of a two-step of market innovation and regulatory response, repeated over decades. The wholly unanticipated COVID-19 pandemic and recession saw unprecedented fiscal and monetary responses, market recovery and a commensurate expansion in funded retirement assets under management. Above all else, the market volatility has been considered an accelerant – with many long-evolving innovations pushed to the top of the agenda and with heightened urgency. An expanded, more innovative and more tech-infused system is rapidly emerging.

ADDITIONAL RESOURCES

Access session replays, related slide decks, speaker details and more on our website – look under *Events / DCIIA/SPARK 2021 Public Policy Series*.

Visit the DCIIA Resource Library on our website (*Resources / Resource Library*) for thought leadership from DCIIA and DCIIA members on the following topics:

- Diversity, Equity and Inclusion
- ESG/Sustainable Investing
- Fiduciary Oversight, Legal and Regulatory Insights
- Financial Wellness and Participant Perspectives
- Investment Options and Best Practices
- Plan Design Matters
- Plan Sponsor Perspectives and Industry Surveys

Members interested in public policy issues are encouraged to join the DCIIA Public Policy Committee, one of several standing committees led by members that meet regularly to discuss timely topics and produce educational content for plan sponsors and the broader financial and retirement industry. To learn more, see *Committees / About our Committees* on our website.

ABOUT DCIIA

The Defined Contribution Institutional Investment Association (DCIIA) is a nonprofit association dedicated to enhancing the retirement security of America's workers. DCIIA's diverse group of members include investment managers, consultants and advisors, law firms, recordkeepers, insurance companies, plan sponsors and other thought leaders who are collectively committed to the best interests of plan participants. For more information, visit: www.dciia.org.

ABOUT SPARK

The SPARK Institute is a member-driven, non-profit organization and leading voice in Washington for the retirement plan industry. Our members include recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms and investment managers. For more information, visit: www.sparkinstitute.org.

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