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Defined Benefit Plans

Two States Consider De-Risking Legislation; Insurance Lawmaker Group Adopts Guidelines

As more companies offload their defined benefit pension obligations to insurance companies in multibillion-dollar transactions, legislators in some states are starting to take notice and to consider laws that are aimed at protecting retirees.

Lawmakers in two states, Connecticut and New York, are considering legislation that would expand disclosures and protections from creditors for plan participants. And legislators in several other states have expressed interest in developing legislation to deal with pension de-risking issues.

''We're looking for champions'' to push legislation on pension annuity buyouts in the states, said Edward Stone, of Edward Stone Law in Greenwich, Conn., who serves as legal counsel to retiree groups and who has worked with lawmakers in Connecticut and New York on their legislation.

Stone has also been involved in an effort to develop standards that are informing the nascent legislative movement.

He helped a group of state lawmakers, the Troy, N.Y.-based National Conference of Insurance Legislators, develop a set of best practices on pension de-risking, which the organization adopted in November.

The insurance industry was also heavily involved in the effort, as the American Council of Life Insurers, Prudential Financial Inc.—which has received the lion's share of group annuity transactions—and others provided input. Criticism of the group's earlier proposed model act on de-risking also was taken into consideration.

Scott Kaplan, head of Prudential's pension risk-transfer team in Woodbridge, N.J., told Bloomberg BNA that his company ''played a leadership role'' in helping to develop the best practices as an industry solution—not just a solution for Prudential. The best practices recommendations are ''a positive step forward to make sure retirees have retirement security, and not only to make sure that they have retirement security, but also to address any other areas where they may be worried about their pension.''

Prudential also supported the product of NCOIL's efforts ''to address any fears, and to increase retirees' confidence and security in these annuity solutions,'' Kaplan said.

Jack Dolan, vice president of media relations for the ACLI, said in an e-mail, ''We support the NCOIL resolution which, among other things, stresses the importance of providing consumers clear information. We oppose efforts in the states that would go beyond the compromise contained in the NCOIL resolution.''

Stone, who serves as legal counsel to the Association of BellTel Retirees Inc. and ProtectSeniors.org, and who had drafted NCOIL's model act, told Bloomberg BNA that reaching consensus on the best practices took some effort, but eventually Prudential ''was very supportive of our efforts.''

''There is still some friction'' regarding disclosure issues, Stone said, but ''we're hopeful that we can find a way to let retirees know they'll be as well off as they were before. The goal is to make sure retirees know their pension retirement savings are safe.''

The issue has gained importance as an increasing number of pension plans have turned to two forms of de-risking in recent years: buying group insurance annuities to transfer pension liabilities and offering retirees and beneficiaries lump-sum benefit options.

Since General Motors Co. announced in 2012 that it was transferring its pension liabilities for 42,000 U.S. salaried retirees and their beneficiaries to Prudential Insurance Co. of America, as well as providing a lump-sum option (39 BPR 1030, 6/5/12), dozens more large plan sponsors have followed in GM's wake, affecting hundreds of thousands of retirees and their beneficiaries.

According to the LIMRA Secure Retirement Institute, pension buyout sales more than doubled in 2014, to $8.5 billion in 2014 from $3.8 billion in 2013 (42 BPR 518, 3/10/15). There were 277 pension buyout contracts in 2014, up 28 percent from 217 the previous year, the report said.

The ERISA Advisory Council said March 20 that de-risking would be one of the topics it addresses this year (see related article in this issue).

NCOIL Best Practices. The best practices were developed in the wake of criticism of the model act.

The American Benefits Council and the American Academy of Actuaries said in letters to NCOIL last summer that state laws based on the model act would violate ERISA (42 BPR 485, 3/10/15).

The four best practices are:

- The state guaranty associations should provide a minimum guaranteed level of coverage of at least $250,000. (According to the Pension Rights Center, only two states, as well as Puerto Rico, fail to meet this level, having minimum limits of $100,000.)

- Payments to individuals should be protected from creditor garnishments, comparable to the protections afforded by the Employee Retirement Income Security Act on annuity payments.

- Individuals should be provided with clear information regarding the key elements of their group annuity arrangements.

- States should adopt laws and regulations that protect individuals from subsequent annuity transfers to other insurers that don't have the financial strength to make annuity payments.

Regarding the state guarantee limits, Ellen Kleinstuber, vice-chairperson of the American Academy of Actuaries' pension committee, told Bloomberg BNA that the AAA has tried to compare the Pension Benefit Guaranty's guarantee limits to the various states' limits on an "apples-to-apples" basis, but found that it was "very challenging for us."

The AAA said in a comment letter to NCOIL in July regarding the group's model act that while plans of failed companies are backstopped by the PBGC, which has maximum guaranteed benefits, the benefit limits set by the state guaranty associations for failed insurers vary from state to state. "Thus, it is difficult to draw a general conclusion as to which is preferable; the analysis will differ by participant based on the individual circumstances," weighing factors such as benefit amounts or which state guaranty coverage applies, the letter said.

According to the PBGC's Standard Termination Filing Instructions, generally, the guaranty association in the state in which a person lives when an insurer can no longer pay the annuities becomes responsible for the benefits.

"One of the things that I think could be a takeaway from this—and starting, we'd be happy to talk with NCOIL about this or the states—is having some more education about how the state limits work," Kleinstuber said.

She also said that the best practices is a "good starting point" for state legislators considering initiatives dealing with group annuity purchases.

State Bills. Lawmakers in Connecticut and New York have reintroduced bills on pension risk-shifting this year after earlier legislation failed to progress.

In Connecticut, H.B. 6772 would require expanded disclosures and protection from creditors. Two insurance industry groups commented on the bill, and although both supported the provision protecting annuitants from creditor garnishment, both criticized the disclosure provisions.

The ACLI said in its letter that the bill would impose "onerous and unnecessary disclosures," and that "plan participants already receive many notices from both the employer and the insurer which are tailored to the particular transaction."

The Insurance Association of Connecticut leveled several criticisms, saying, among other things, that the disclosure provisions are "premised on the misconception that retirement benefits provided through an annuity contract are suspect and in need of greater security."

Stone, who has been working with lawmakers in both states, said that the Connecticut bill may get renegotiated.

The New York bill (S. 1092) also would require disclosures, that third-party guarantees or reinsurance contracts equal PBGC coverage, uniform fiduciary standards and disclosures, uniform and equivalent protection from creditors and bankruptcy trustees, a lump-sum cash-out option for retirees receiving benefits and that all group annuity pension transactions be vetted by an independent third party created by the state insurance superintendent.

Although the New York bill hasn't received comments yet, Scott J. Macey, who recently retired as president and chief executive officer of the ERISA Industry Committee, said in an e-mail that the "proposal would seem to have some problems with ERISA preemption," and it "seems to be an overreach."

The Connecticut bill, however, "largely makes sense," Macey said.

Several other states have also taken interest in similar legislation, Stone said. Lawmakers in Florida, Massachusetts, Pennsylvania and Virginia have reached out to his law firm to learn more about how to deal with pension annuity transfers, he said.

By Sean Forbes

To contact the reporter on this story: Sean Forbes in Washington at sforbes@bna.com

To contact the editor responsible for this story: Phil Kushin at pkushin@bna.com

A copy of the NCOIL best practices recommendations is at http://op.bna.com/pen.nsf/r?Open=sfos-9uppuw.

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