



AMERICAN BENEFITS COUNCIL

July 9, 2014

CONCERNS ABOUT NCOIL'S PROPOSED PENSION DE-RISKING MODEL ACT

The American Benefits Council ("Council") has significant concerns with the proposed Pension De-Risking Model Act (the "Model Act") that is under consideration by the National Conference of Insurance Legislators ("NCOIL").

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans that cover more than 100 million Americans. The Council and its plan sponsor members are highly supportive of efforts to assist employees in achieving financial security in retirement through access to retirement savings opportunities, financial education, planning assistance, and information about plan rules and changes. In this regard, we appreciate NCOIL's focus on ensuring that individuals can achieve a secure retirement in our voluntary system.

The Model Act would apply to all purchases of annuities to satisfy pension liabilities – both (1) the so-called "de-risking" activities that employers use to effectively terminate their plan in part by partially discharging their pension plan liabilities under the Employee Retirement Income Security Act of 1974 ("ERISA"), and (2) full terminations where an ERISA plan's liabilities are completely discharged.

Very generally, in all such annuity purchase transactions, the Model Act would require additional disclosures, state regulatory approval of the transaction, opportunities for plan participants to opt out of the transaction, the right for participants to request a lump sum option at regular intervals, supplemental protection equal to the Pension Benefit Guaranty Corporation's ("PBGC") coverage for plans, and other protections similar to those that ERISA requires with respect to plans. But as explained in more detail in the attached letter, the Council has the following significant concerns with the Model Act.

- The Model Act would severely undermine and interfere with the voluntary nature of the private pension system.
- By preventing employers from exercising their choice to engage in annuity purchase transactions, the Model Act would, until preempted as discussed below, lock employers into financially volatile situations that likely will be very disruptive – and potentially disastrous – to businesses and their current and former employees.
- The major provisions of the Model Act, including the requirement to obtain a state commissioner’s or superintendent’s approval of any annuity purchase transaction and a participant’s right to opt out of the transaction, would be preempted by ERISA’s well-established authority giving employers the right to decide whether to terminate a plan in whole or in part.
- Most of the other provisions of the Model Act, such as the right to lump sums at regular intervals, would be so burdensome and cost-prohibitive that they would also be preempted by ERISA for effectively preventing employers from terminating their plan in whole or in part.
- The entire Model Act relates solely to ERISA plans and does not apply to any annuity contract that is unrelated to an ERISA plan. Thus, the Model Act runs counter to ERISA’s preemption provision, which ensures both the voluntary nature of plans and uniform retirement standards throughout the United States, and would not be saved by ERISA’s insurance savings clause.

The Council looks forward to discussing our concerns with NCOIL and working with NCOIL on this important set of issues to address the underlying issues that have made it more challenging for employers to offer defined benefit pension plans and for employees to utilize these retirement plans to prepare for a secure retirement.