

National Conference of Insurance Legislators (NCOIL)
Resolution Concerning Best Practices for
Pension De-Risking through Private Annuitization

Adopted by the Executive Committee on November 23, 2014. Sponsored for discussion by Rep. George Keiser (ND)

WHEREAS, in recent years, defined benefit (DB) pension plan sponsors have sought to reduce business risks associated with maintaining their DB plans while honoring the pension benefit commitments made to their employees. Toward that end, DB pension plan sponsors have engaged in pension risk transfer transactions which involve the purchase of guaranteed annuities from highly rated insurance companies. These annuities fulfill the plan's obligation by transferring that obligation to the insurance company, effectively removing the associated liability from the plan. The National Conference of Insurance Legislators (NCOIL) has explored various issues related to these transactions in order to determine whether any action is needed by state insurance legislators; and,

WHEREAS, NCOIL feels that while current protections in state insurance law and regulations (in addition to the ERISA protections at the Federal level) are generally sufficient and responsive to these concerns, we also believe that it would be helpful to provide best practices to states in four key areas: uniform protection from creditors, subsequent transfer of liability to another insurer, annuitant disclosure, and State Guaranty coverage levels. These best practices are designed to enable states to address potential concerns before they arise and to ensure the continued strength of this market. As is consistent with the mission of NCOIL, the focus of this resolution is on the state insurance regime, rather than on provisions relating to ERISA, or those which would conflict with or be preempted by ERISA; and,

WHEREAS, the role that state guaranty associations play in plan participant protections can be an area of substantial confusion. Quite unlike the obligation of employers to fund an employee's future benefit, the financial condition of an insurer, including the adequacy of asset coverage obligations, involves continuous oversight, often by multiple state insurance departments. Nevertheless, the extent of state guaranty backstop is very important; and,

WHEREAS, currently, the NAIC Life and Health Insurance Guaranty Association Model Act provides for coverage equal to \$250,000 for annuity products. Currently 48 out of the 50 states plus the District of Columbia are at that level or higher. To provide a minimum uniform protection level by the Guaranty Associations, those states whose limits are below \$250,000 should act now to raise them; and,

WHEREAS, generally, states provide broad creditor protections for annuity contracts. However, if any state's law is silent or ambiguous as to its protection of the contracts from the claims of creditors, clarification is advised. NCOIL encourages States to consider whether their laws in this area are clear and unambiguous, to ensure that any gap in protections is addressed, and encourage States to examine their laws to ensure such protection; and,

WHEREAS, annuities should be protected from creditors and from any garnishment to the same extent that ERISA plans are protected. In the event of bankruptcy, note that section 522 of the

Bankruptcy Code was modified in 2005 to include a provision that a direct transfer of retirement funds will not cease to qualify for protection because of the transfer. (11 U.S.C. Section 522(b)(4)(C). An annuity received in a de-risking transaction would be protected under this provision in the event of bankruptcy; and,

WHEREAS, in general, group annuity certificates issued to participants to provide qualified plan benefits are required to follow the plan provisions and form of benefit rules, and therefore do not permit assignment, to creditors or any other party. See IRS General Counsel Memorandum 39882 (May 27, 1992); and,

WHEREAS, we note that under State law, some types of garnishment are always permitted, even under ERISA retirement plans. These include spousal division of property (in the form of Qualified Domestic Relations Orders (QDROs) in qualified plans), court ordered child support garnishment, and other court ordered settlements. These court proceedings can compel payments from any income source and do not distinguish between benefits paid from a plan and those paid from the group annuity certificate or any other source of income; and

WHEREAS, in general, transferring liabilities from one insurer to another is a highly regulated area of insurance regulation, and current state laws generally prevent this type of transaction without approval by the applicable state insurance departments; and,

WHEREAS, once coverage of any kind is underwritten and issued by a licensed insurer, it is generally not contemplated that it would be transferred in the normal course of business. A group annuity contract, selected under the standards of DOL's Interpretive Bulletin 95-1 (Safest Available Annuity Standard) issued in connection with a de-risking transaction is no exception. It should not be easily transferred to another insurance carrier without sufficient cause, which otherwise could allow the annuity selection rules to be circumvented. This standard should apply to all annuities. Any purchaser who takes the time to carefully select a provider should be assured that this choice will not be easily changed outside of his control and without appropriate state regulatory supervision; and,

WHEREAS, current law already substantially prevents this from occurring. The liability under these group annuity contracts can never be extinguished at the carrier's option, and may only be done through an assumption reinsurance transaction. Assumption reinsurance transactions are highly regulated.

NOW, THEREFORE, be it resolved that NCOIL urges each state whose Guaranty Association limit for annuities is less than the current NAIC model act level to raise the coverage limit to the NAIC model act level or higher.

AND, BE IT ALSO RESOLVED that payments to individuals provided under annuity arrangements should be protected from creditor claims, under state law, in a manner comparable to the protections they received under the retirement plan.

AND, BE IT ALSO RESOLVED, that individuals whose promised benefits will be guaranteed by a group annuity contract should be provided clear information regarding the key elements of their arrangement. We encourage states to adopt a practice of incorporating confirmation of

practices and procedures for delivery of such disclosures into state insurance examinations, similar to how marketing material is included in such reviews; and

AND, BE IT ALSO RESOLVED, states are encouraged to ensure that insurance laws and regulations are reasonably designed to protect individuals from subsequent transfers to carriers lacking adequate financial strength to honor guaranteed payments arising under an annuity contract. To the extent such laws and regulations are not well developed or may be unclear, states are encouraged to act appropriately to correct the situation.

AND, BE IT FURTHER RESOLVED that a copy of this resolution will be sent to each state legislature, each state insurance regulator, and the National Association of Insurance Commissioners.