Pension Plan De-risking: Fiduciary Protection of Retirees
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Talking Points:
Pension plan de-risking is when a defined benefit pension plan sponsor pays an insurance company to assume the monthly payments of pension benefits. Employees and retirees may be offered a one-time lump-sum payment in lieu of a monthly annuity benefit. Ever since General Motors and Verizon made headlines with their mega-billion-dollar annuitization deals in 2012, the movement for defined benefit plan sponsors to “de-risk” by transferring their pension obligations to commercial insurers has not let up.

The NRLN urges Congress to amend and extend DOL policy relating to the fiduciary standards under ERISA for selecting an annuity provider, as set forth in DOL Interpretive Bulletin 95-1, as follows:

- **Congress should require** that following a transfer of assets to settle liabilities for a subgroup of participants – whether by group annuity purchases or by lump sum buy-outs – **the on-going plan must be as well funded as it was prior to a transaction**.

- If the entire plan is not terminated pursuant to ERISA Section 4041, after review and approval by PBGC, the plan has a fiduciary duty to continue to hold the annuity contracts as a plan asset, so that retirees do not lose PBGC or other protections. The IRS should provide guidance that the distribution of a group annuity contract is a form of benefit distribution requiring consent.

- Alternatively, the plan sponsor can choose to permanently transfer its liability for individual retirees to a qualified annuity provider, as if the plan were terminated, but only if it complies with both of the following two safe harbor requirements:
  - **The plan seeks and obtains the affirmative consent of individual retirees.** Retirees who do not consent must have the option to remain participants.
  - **The plan must purchase reinsurance from a separate and highly-rated insurer to guarantee the payment of benefits, in case of default.** This should protect individual participants from the permanent loss of benefits that occurs to the extent the total value of their annuity exceeds state insurance guarantee funds, which can fall far short of PBGC maximum coverage levels and vary widely from state to state.

As part of either safe harbor, **three additional protections should be required**:

- the purchase of the annuity contract – and any reinsurance purchased to satisfy the safe harbor above – should be subject to DOL’s safe annuity rule standards.
- the plan sponsor must send formal notification to plan participants 90 days prior to the transaction, with specific disclosures about the impact on participants.
- If the agencies do not act, Congress should at a minimum require plan sponsors to maintain back-up insurance, either from the PBGC or a highly-rated reinsurance carrier.

With respect to any lump sum buy-outs offered to participants, DOL should clarify fiduciary responsibilities to make complete and plain English disclosures concerning the financial trade-offs, including tax implications and the higher cost of purchasing an individual annuity contract.

For more information on this subject, contact Alyson Parker at 813-545-6792 or executivedirector@nrln.org (More)
Financial Accounting Standards Board (FASB) rules and legislation that have accelerated de-risking: FAS-87 forced pension plan disclosure on income statements, FAS-158 in 2006 mandated mark-to-market accounting for plan obligations on the balance sheet, 2006 PPA and MAP 21 rate relief exposed rate variability risk. De-risking strategies are the latest form of financial re-engineering.

A MetLife de-risking poll and article in Pensions and Investments Jan. 24, 2019 revealed that:

- # of defined-benefit pension plans has shrunk from 62% to 19% over the past 30 years.
- 76% of plans with de-risking goals intend to completely divest all of companies' defined benefit liabilities at some point. 33% intend to do so within the next five years.
- Of the 67% considering a risk transfer within the next two years, 77% have evaluated the financial impact, 74% have talked with stakeholders, 65% engaged in data reviews and cleanup, 59% explored available solutions and/or quantified the cost of a risk transfer.
- 79% are likely to consider buyouts following other major corporation buyouts, 67% of respondents will use annuity buyouts to de-risk, up from 57% in MetLife's 2017 Poll.

De-risking, mile markers on the road to defined benefit pension plan Voluntary Terminations:
Freezing of benefit accruals and closing admittance of employees – shift to 401K’s...
Liability Driven Investment (LDI) - lowers plan liability risk and bolsters balance sheets.
Combining two or more plans - increases risk to participants of higher-funded plans.
Lump Sum Pension Buyouts, reduce assets, liabilities & PBGC premiums.
Involuntary Annuity Buyouts (by groups) reduce assets, liabilities & PBGC premiums
Voluntary Annuity Buyouts reduce assets, liabilities & PBGC premiums
Voluntary Terminations may create welfare benefit losses and plan asset reversions.

NRLN concerns and proposals:
1) De-risking solutions create selection risks, the loss of ERISA protections and loss of PBGC insurance (PBGC loses per capita premiums). NRLN seeks reinsurance and other remedies.
2) Corporate benefit calculation errors result in “recoupment” risk for plan participants. NRLN asks that corporations pension plan actuarial risk calculations absorb this expense.
3) Even plan sponsors who de-risk plan investments (the LDI strategy) may be able to save plan participant health care and life insurance benefits using plan surplus if the current Section 420 threshold of 125% were lowered to a safe but lower level of 110%.
4) Voluntary Plan Terminations, unlike distress terminations, may be executed by financially healthy companies that may even borrow funds needed to voluntarily terminate plans, placing welfare benefits at risk. Asset reversion rules should be revised to require welfare benefit funding before a plan termination or before allowed asset reversions as currently defined.

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