NRLN
NATIONAL RETIREE LEGISLATIVE NETWORK

Pension Plan 'De-Risking': Affirmative Fiduciary Protection of Retirees

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Talking Points

Verizon management pension plan participants sued Verizon for transferring 41,000 of the 91,000 participants and $7.4 billion to Prudential. In their pleadings they asserted the plan sponsor violated ERISA Section 4041 but the federal District Court found in his April 2014 ruling that nothing in ERISA either expressly permits or forbids a plan from using an annuity buy-out to involuntarily separate a subgroup of retirees already receiving benefits from the plan and thereby strip them of PBGC insurance and other protections.

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

- **If the 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 one of the following two safe harbor requirements:**
  - **The plan seeks and obtains <u>the affirmative consent of individual retirees</u>**. Like a lump sum buy-out offer, retirees who do not consent must have the option to remain participants. ***OR***
  - **The plan can <u>purchase reinsurance</u> from a separate and highly-rated insurer to guarantee the payment of benefits, in case of default,** of each individual participant's loss to the extent it is not covered by state insurance guarantee funds; which fall far short of PBGC maximum coverage levels and vary widely from state to state.
  - As part of either safe harbor, **two 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 the safe annuity rule standards adopted.
    - the plan sponsor should 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.

Also, agencies should require that following a transfer of assets to settle liabilities for a subgroup of plan 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.

With respect to lump sum buy-outs, 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.

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