Testimony of Prudential

Before the Joint Committee on Labor & Public Employees

Tuesday, February 26, 2013

House Bill 6148 – An Act Providing Protection to Retirees from Discrimination in Pension De-Risking Transactions

Senator Osten, Representative Tercyak, and members of the Joint Committee on Labor & Public Employees -- Prudential appreciates the opportunity to offer the following testimony in opposition to **House Bill 6148 - An Act Providing Protection to Retirees from Discrimination in Pension De-Risking Transactions**. As discussed further below, this legislation is not only unnecessary but potentially harmful.

For more than 80 years, Prudential has provided millions of Americans the security of guaranteed lifetime income in retirement. Prudential has paid retiree benefits under group pension guaranteed annuities and other arrangements since 1928 without interruption. Indeed, Prudential continues to this day to make annuity payments on one of its earliest such contracts, executed in 1928.

Under group pension guaranteed annuities, an insurer irrevocably assumes the obligations of a defined benefit pension plan to make future annuity payments to retirees and their beneficiaries. Payments under the annuity contract replicate both the amount and form of payments that retirees and beneficiaries receive under the plan. The insurer, as a highly regulated company, is required to maintain appropriate reserves and capital to meet its obligations.

A pension plan's purchase of a group annuity is subject to federal pension law (ERISA). ERISA creates a uniform legal framework that governs the establishment, operation and termination of plans. ERISA also makes plan fiduciaries responsible for selecting the "safest available" insurer and provides safeguards and remedies for participants in ERISA plans. State laws that interfere with the federal scheme risk the creation of disincentives for employers to do business in Connecticut and to offer plans that cover Connecticut residents.

House Bill 6148 seeks to create additional protections for pension plan participants who may be covered by group guaranteed annuities. This legislation would mandate disclosures to participants, state approval of transactions, provision of challenge and opt out rights to plan participants (including the right to avoid the transaction by obtaining a lump sum payment) and state guaranty fund coverage for annuitants that is equivalent

to coverage provided to ERISA plan participants by the Pension Benefit Guaranty Corporation (PBGC).

The protections provided by the proposed bill are unnecessary because the protections already exist under current federal law. Under federal law ---

- A plan fiduciary must choose the "safest available" annuity provider and otherwise meet fiduciary standards in choosing the insurer;
- A former plan participant may sue the fiduciary if it does not prudently select the insurer;
- A fiduciary must notify the plan participants of the name and contact information of the insurer;
- The insurance contract must obligate the insurer to pay benefits identical to the benefits earned under the pension plan; and
- The insurance contract cannot be cancelled, except for fraud, without the consent of the former plan participant and must be legally enforceable by the former participant.

The extra layer of state protections would do little to increase protection and could instead be harmful because it would ---

- Interfere with the federal scheme for design and operation of pension plans, encourage other states to create conflicting protections and prompt former participants to bring unsuccessful suits that would result in additional and unnecessary costs to plans covering Connecticut employees and employers who voluntarily offer plans;
- Undermine actuarial and investment assumptions necessary to manage pension plans, and make employers less likely to maintain such plans;
- Create anti-selection risks for insurers issuing group pension guaranteed annuities and thereby make pension de-risking solutions prohibitively complex and expensive;
- Deny many retirees the opportunity to be better off and more secure by receiving guaranteed retirement income from a highly regulated insurer that has the legal obligation to maintain appropriate reserves and capital to meet its obligations and expertise in investment management; and
- Leave retirees who choose a lump sum worse off because they will have neither the security of guaranteed retirement income from a highly regulated and financially strong insurer nor the protections of PBGC or state guaranty coverage.

The proposal to expand state guaranty association coverage is unnecessary and potentially harmful because it ---

- Would disrupt the state guaranty system and create a disincentive for insurers to issue annuity contracts covering Connecticut residents, by establishing guaranty coverage in Connecticut that differs significantly from other states; and
- Mistakenly assumes retirees suffer significant harm by loss of the PBGC "guarantee," despite PBGC's large accumulated deficit and the fact that PBGC's insurance program is not funded by general tax revenue.

Thank you for consideration of our position in opposition to **House Bill 6148**. If helpful to you, we would be pleased to meet with you and your staff to provide additional information. Prudential's Retirement business is headquartered at 280 Trumbull Street, Hartford, CT, where we have approximately 700 employees, including our Retirement Senior Leadership Team. If you have any questions about this testimony, please feel free to call Michael McCann at 401-541-9170 or email him at michael.mccann@prudential.com.