ACLI
Financial Security...for Life.

Kate Kiernan
Regional Vice President, State Relations

Testimony of the American Council of Life Insurers
Before the Joint Committee on Labor & Public Employees – Tuesday, February 26, 2013

Senate Bill 54 - An Act Establishing a Retirement Savings Plan for Low-Income Private Sector Workers

Senator Osten, Representative Tercyak, and members of the Joint Committee on Labor & Public Employees, the American Council of Life Insurers (ACLI) appreciates the opportunity to offer the following comments on Senate Bill 54 - An Act Establishing a Retirement Savings Plan for Low-Income Private Sector Workers. Life insurance companies have a distinct and knowledgeable perspective as providers of comprehensive retirement products which serve the needs of individuals and employers both large and small in Connecticut. ACLI respectfully opposes Senate Bill 54, which would create a state-run retirement savings plan in direct competition with our members. It is ACLI's contention that the state should not be in the business of competing in or replacing the competitive marketplace of retirement plan products and services already available to Connecticut employers and workers.

Life insurance is a key part of the Connecticut's economy. The state is fortunate to have a strong group of domestic life insurance companies located in the state. The life insurance industry directly employs 37,000 Connecticut residents and supports an additional 54,000 related jobs in the state. In addition, life insurers invest approximately $80 billion in Connecticut's economy.

Senate Bill 54 would create a state managed retirement plan for private sector workers. In essence, the state would play the role of a financial services company, putting life insurers at a competitive disadvantage while not directly addressing retirement savings challenges. The proposal raises both practical implementation implications as well as fiscal implications.

Instead of the proposal before you today, the state should encourage additional private sector retirement plan coverage and employer awareness. Connecticut should work to improve and expand the employment-based system by simplifying administration and lowering costs for employers that want to offer retirement savings plans. The state and the private sector should work together to make employment-based retirement plans more widely available.

One of the hurdles that the state will face in creating a pension plan for private sector workers is federal labor laws. Last year, Connecticut received an advisory opinion from the U.S. Department of Labor (DOL Advisory Opinion 2012-01A). The DOL opinion letter explained why a state health insurance program covering private sector nonprofit employees would be subject to ERISA. While clearly the participation of non-profit employees to the state group health plan is different from a state-run retirement program, the rationale holds true to retirement plans, since there is no distinction between welfare benefit plans and pension benefit plans for purposes of ERISA title I coverage. For defined benefit pension plans, being subject to ERISA includes the obligation to pay annual insurance premiums to the Pension Benefit Guaranty Corporation (PBGC), which protects workers' pensions.

American Council of Life Insurers
101 Constitution Avenue, NW, Washington, DC 20001-2133
(202) 624-2463 t (866) 953-4114 f katekiernan@acli.com
www.acli.com

Another hurdle, represented by those premiums and other ERISA-related administrative costs, is the significant expense to the state. Creation of this type of a program is not inexpensive. The Office of Fiscal Analysis (OFA) placed a $500,000 fiscal note on Senate Bill 652, a state-sponsored retirement proposal considered in 2008. The OFA cost analysis was well-short of the actual expenses to start up this type of a program -- OFA allocated $125,000 for the development of an ERISA compliant document plan alone, and a Milliman study of a California state-sponsored retirement plan suggested that the total administrative cost could reach $88 per worker/$2,039 per employer or more each year.

In addition, Connecticut is struggling to meet its obligations on its state employee pension plan. According to a Reuters article published August 8, 2012, "Connecticut's two main pension funds had a negative rate of return of 0.9 percent in the 2012 fiscal year, which reduced their total assets to about $24 billion...." Connecticut is not alone. Many government-run plans for state employees are dysfunctional and have become a serious drain on taxpayers. Plans in states such as California and Illinois are significantly underfunded, and have affected the financial ratings of those states. There is every reason to believe that just as in the case of pensions for state employees, government-run plans for private sector employees will promise much more than they can deliver, creating yet another liability for taxpayers.

As stated above, ACLI believes that a better approach would be collaboration between the state and private sector on solutions to enhance retirement savings via the many existing options that are already made available to employers and employees by life insurers and other companies.

Thank you for your consideration of our position in opposition to Senate Bill 54. Please contact John Larkin at (860) 508-9924 or Kate Kiernan at (202) 624-2463 with any questions.

ACLI is a trade association with more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. ACLI members represent more than 90 percent of the assets and premiums of the life insurance and annuity industry. There are 233 ACLI member companies licensed to do business in Connecticut, accounting for 90 percent of the ordinary life insurance in force in the state.

ACLI
Financial Security...for Life.

LIFE INSURERS AND YOUR STATE 2013

CONNECTICUT

Jobs

- The life insurance industry generates approximately 90,000 jobs in Connecticut, including 37,000 direct employees and 53,000 non-insurance jobs.
- 393 life insurers are licensed to do business in Connecticut and 27 are domiciled in the state.

Protection

- Connecticut residents have $508 billion in total life insurance coverage.
- State residents own 2 million individual life insurance policies, with coverage averaging $211,000 per policyholder.
- Group life insurance coverage amounts to $166 billion.
- Individual life insurance coverage purchased in 2011 in Connecticut totaled $27 billion.
- $13 billion was paid to Connecticut residents in the form of death benefits, matured endowments, policy dividends, surrender values, and other payments in 2011.
- Annuity benefits paid in the state in 2011 totaled $2 billion.

Investments

- Life insurance companies invest approximately $79 billion in Connecticut's economy.
- About $67 billion of this investment is in stocks and bonds that help finance business development, job creation, and services in the state.
- Life insurers provide $2 billion in mortgage loans on farm, residential, and commercial properties, and own $947 million in real estate in Connecticut.
- Life insurers purchased $888 million of Connecticut-related Build America Bonds, or 46 percent of these bonds issued.

Across America

- 75 million American families depend on life insurance industry products to protect their financial and retirement security.
- The life insurance industry generates approximately 2.5 million jobs in the U.S., including direct employees, those who sell life insurance products, and non-insurance jobs supported by the industry.
- 20 percent of Americans' long-term savings is in life insurance and annuities. These savings are key to the protection and guarantees these products provide.
- In 2011, life insurers provided payments in excess of $545 billion, helping families guarantee long-term financial security now and in retirement.
- With $4.9 trillion—90 percent of the industry's total assets—invested in the U.S. economy, life insurers are one of the largest sources of investment capital in the nation.
- Life insurers are the largest single source of bond financing for American business, holding 18 percent of all U.S. corporate bonds

ACLI in Connecticut

- 233 ACLI member companies provide financial and retirement security to families.
- 88 percent of all life and annuity payments are from ACLI member companies.
- 86 percent of total life insurance coverage is provided by ACLI members.

Sources: ACLI calculations based on National Association of Insurance Commissioners (NAIC) 2011 annual statement data; U.S. Bureau of Economic Analysis, 2011 data; U.S. Census Bureau, 2011 data; U.S. Bureau of Labor Statistics, 2011 data; and U.S. Treasury Department, 2011 data.

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

APRIL 27, 2012

The Honorable Dannel P. Malloy
Governor of Connecticut
State Capitol
210 Capitol Avenue
Hartford, CT 06106

2012-01A
ERISA SEC.
3(32) & 4(b)(1)

Dear Governor Malloy:

This is in response to your request for an advisory opinion under the Employee Retirement Income Security Act (ERISA), concerning the governmental plan status of a group health plan established by the State of Connecticut for state employees, retirees, and their families (hereafter State Plan). You request the Department's view as to whether participation in the State Plan by certain private, nonprofit employers under the "Connecticut Healthcare Partnership" provisions in Connecticut Public Act 11-58 (Public Act) would adversely affect the status of the State Plan as a "governmental plan" under section 3(32) of Title I of ERISA. You have enclosed for our consideration the relevant portions of the Public Act and a Fiscal Analysis of the impact of the provisions on the State Plan.

The State Plan is a self-insured group health care benefits plan established under subsection (m) of Section 5-259 of the Connecticut General Statutes. Public Act 11-58 requires the State to offer coverage under the State Plan to employees and retirees of nonstate public employers, beginning on January 1, 2012, and certain nonprofit employers on January 1, 2013. Section 1 (3)(A) of the Public Act defines the term "nonprofit employer" as:

> (A) a nonprofit corporation, organized under 26 USC 501, as amended from time to time, that (i) has a purchase of service contract, as defined in section 4-70b of the general statutes,[1] or (ii) receives fifty per cent or more of its gross annual revenue from grants or funding from the state, the federal government or a municipality or any combination thereof . . . [2]

Under Section 2(g)(1) of the Public Act, the Comptroller has the authority to cancel coverage to any nonprofit employer, and to discontinue accepting applications for

[1] Connecticut General Statutes Section 4-70b (1) defines a "purchase of service contract" as a "contract between a state agency and a private provider organization for the purpose of obtaining direct health and human services for agency clients."

[2] Under Section 1(3)(B) of the Public Act, the definition of "nonprofit employer" includes tax-exempt organizations under Internal Revenue Code section 501(c)(5) (labor, agricultural, or horticultural organizations). You have not requested an opinion as to whether these employers could be considered governmental agencies or instrumentalities for purposes of section 3(32) of ERISA.

section 414(d). In light of the pending IRS project in this area, nothing herein should be construed to apply under section 414(d) of the Code.

A governmental plan within the meaning of ERISA section 3(32) must be established or maintained for its employees by a governmental entity. In that regard, the Department has previously concluded that private sector contractors, including nonprofit or tax-exempt organizations, are not governmental agencies or instrumentalities for purposes of section 3(32) of ERISA merely because they perform public service functions under governmental direction and control pursuant to contracts with governmental entities. *See* Advisory Opinion 97-05A (nonprofit organization that provides social services under contract to county agencies is not a governmental agency or instrumentality). *See also* Advisory Opinion 95-27A (ambulance service whose sole connection to government is the receipt of governmental operating subsidy is not governmental agency or instrumentality). Thus, under our existing advisory opinion guidance, the Department would not treat the private nonprofit employers described in Section 1(3)(A) of the Public Act as governmental agencies or instrumentalities within the meaning of section 3(32) of ERISA solely because they operate under a contract with a state agency for the purpose of providing direct health and human services to the public, or receive 50% or more of their gross annual revenue from federal, state or local grants or funding.

With respect to your request regarding participation by a *de minimis* number of private sector employees in a governmental plan, the Department addresses this issue based on our existing advisory opinion guidance.[4] In 2005, the Department issued Advisory Opinion 2005-07A, which assumed that nonprofit organizations that contract with federal, state and local governments to provide health services to the public are not themselves governmental agencies or instrumentalities and concluded that a *de minimis* number of the organizations' employees could participate in a State Health Plan without affecting that plan's status as governmental under ERISA section 3(32). The Department did not establish a specific number of employees or percentage threshold that would constitute more than a *de minimis* number for this purpose. None of our advisory opinions, however, have suggested that the substantial level of private sector participation described in your letter would be permissible in a plan claiming the governmental plan status exemption from ERISA. *See, e.g.,* Advisory Opinion 99-07A (participation by approximately 300 private sector employees in the "Employees' Retirement System of the City of Milwaukee" that covered approximately 25,221 public employee participants is *de minimis*). Rather, and again based on existing guidance, the Department would view the participation of private nonprofit employers in the Connecticut State Plan described in your letter as more than *de minimis*, and, therefore,

---

[4] In the ANPRM relating to the general definition of the term "governmental plan" under section 414(d) of the Code, the Department of Treasury and IRS request comments on "existing practices under which a small number of private employees participate in a plan that would otherwise constitute a governmental plan under section 414(d)." Comments on the ANPRM will be forwarded to the Department and the PBGC.