

News

Understanding PRT: Administrative and Fiduciary Considerations

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PUBLISHED

03/04/2022

SOURCE

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Detailed coverage by *PLANSPONSOR* of [George Sepsakos'](#) session at the ISS Media 2022 Understanding PRT virtual conference on March 3, 2022 provides insight on the critical topic of administrative and fiduciary considerations pertaining to pension risk transfer transactions.

In its summary *PLANSPONSOR* noted that, offering some legal perspective, Sepsakos said an important distinction to make when considering PRT is the difference between fiduciary and settlor functions.

“The company generally acts as a ‘settlor’ when establishing, amending or setting the terms of a benefit plan such as a pension,” Sepsakos said. “Settlor functions are not governed so strictly, and plan sponsors have freedom in deciding what kind of benefit they want to offer at what time. In contrast, steps taken to actually implement the plan will generally trigger fiduciary status under the Employee Retirement Income Security Act. This distinction is important in this entire discussion and in the PRT marketplace.”

PLANSPONSOR went on to add that Sepsakos emphasized that, when annuities are purchased for a terminating plan, both the Department of Labor and the federal courts have agreed that this process represents a fiduciary function. ERISA, in this case, requires prudence and loyalty on the part of fiduciaries—and that the fiduciary acts for the sole and exclusive purpose of providing benefits and paying only reasonable expenses.

“Some folks may remember that, back in 1995, the DOL addressed this situation in the aftermath of the implosion of the insurance company Executive Life,” Sepsakos recalled. “There was extensive litigation following that event regarding the selection of Executive Life as an annuity provider by certain pension plans. In some of the cases, it was determined that the employers had not lived up to their fiduciary responsibilities, while in other cases the opposite conclusion was reached. This led to the DOL taking the step of creating and publishing the important Interpretive Bulletin 95-01.”

As Sepsakos summarized, and *PLANSPONSOR* reported, this bulletin speaks to the importance of selecting the safest-possible annuity, unless there is a compelling reason to act otherwise. It requires fiduciaries to conduct a thorough and analytical

search for identifying and selecting annuity providers, as well as an evaluation of the credit worthiness and the claims-paying abilities of those insurers.

“The DOL points to various factors a fiduciary should consider,” Sepsakos said. “Some of these include the quality and diversification of the investment portfolio of the insurer, the insurer’s capital levels and surplus, its lines of business and its overall size relative to the transaction being considered. Other factors to weigh include the role of state guaranty associations. There’s a lot there, frankly, and it suggests that the fiduciary should obtain the advice of an independent expert in cases where the internal expertise is lacking. It instructs fiduciaries to be very wary of conflicts of interest, as well.”

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