



TO: MEMBERS OF THE COMPACT MANAGEMENT COMMITTEE

FROM: COMPACT OFFICE

DATE: DECEMBER 2, 2025

SUBJECT: BRIEFING MEMO REGARDING ACLI'S CONCERNS TO THE DEFINITION OF EMPLOYER AND NON-EMPLOYER GROUPS IN PENDING AMENDMENTS TO GROUP ANNUITY STANDARDS

Executive Summary

The Compact's Management Committee is reviewing definitions for "employer group" and "non-employer group" in the pending amendments to the group annuity standards, following concerns from the American Council of Life Insurers (ACLI) about how these definitions affect ERISA-covered retirement plans. ACLI requested that the Compact's definition of "employer group" be expanded to include trustees or sponsors of retirement plans adopted by unrelated employers.

The Compact Office suggests alternative language to ACLI's proposal. The language would be at the end of the pending amendment of the scope section for the group annuity standards as follows:

For the purpose of this Uniform Standard, trustees, fiduciaries, or employer sponsors of a retirement plan adopted by two or more unrelated employers for the benefit of their employees and their beneficiaries are considered employer plans for purposes of ERISA but are subject to the same procedure as Non-Employer Groups in terms of seeking approval, if required under applicable states laws, of the specific group.

Background

During the Compact's in-person joint meeting of the Management Committee and Commission, held on August 12th, 2025, the Compact Chair addressed comments received from the ACLI and asked the Compact Office to brief the issue for further consideration by the Management Committee. The ACLI has expressed concern that the definitions of "employer group" and "non-employer group" in the Compact's group-type framework may impact the treatment of certain groups in the context of ERISA-covered retirement plans.

Under the *Operating Procedure for the Use of Compact-Approved Products for Other than Employer Groups (Group Operating Procedure)*, a keystone provision allows Compact-approved products to accommodate both employer and non-employer group types. Insurers continue to follow the existing state process for filing and approval requirements for groups other than employer groups before a Compact-approved product can be issued to a specific group or group type in a particular state.

The Product Standards Committee has drafted, and the Commission has adopted, terminology and provisions for employer and non-employer groups within the respective scopes of Uniform Standards for group life and disability income product lines. The Product Standards Committee did not receive any comments related to the language accommodating non-employer groups, including when amending the proposed group annuity standards.

On June 9th, 2025, the Product Standards Committee recommended that the Management Committee initiate the rulemaking process for non-employer group amendments to the following standards:

- Group Fixed Annuity Contract Uniform Standards;
- Uniform Standards for Group Guaranteed Interest Contracts for Non-variable Annuities; and,
- Group Annuity Certificate Uniform Standards.

ACLI submitted a comment letter raising the concern that the *Group Operating Procedure* definition of “non-employer group,” which is used in the proposed amendments to the group annuity standards listed above, “*would be legally and practically very problematic for insurers selling contracts to pooled employer plans (PEP), multiple employer plans (MEP) and multiemployer (Taft-Hartley) plans.*” See Comment Letter, Attachment A.

Compact Group Framework and Operating Procedure

The Commission adopted the group annuity Uniform Standards, which are pending amendment, in September 2019. The current scope of these standards is for annuity contracts that are issued *to employers, or the trustees of a fund established by an employer*. To date, this scope language, across group life, disability income and annuities, has been applied to permit group filings for use with single employer groups.

In December 2022, the Commission adopted the *Group Operating Procedure* establishing a framework to preserve states’ review authority over eligible groups “other than employer groups.” At the end of 2024, the Commission amended the group term life, whole life and disability income Uniform Standards to expand the scope for products issued to “employer groups” and “non-employer groups” based on definitions in the *Group Operating Procedure*.

The *Group Operating Procedure* defined “Employer Group” as *an employer, or the trustees of a fund established by an employer, which shall be deemed to be the policyholder to insure employees of the employer, and if applicable their dependents, for the benefit of persons other than the employer and must be*

authorized under the laws of the jurisdiction where the policy or certificate is delivered or issued for delivery. (Emphasis added).

The Group Operating Procedure defined “Non-Employer Group” as group types that do not fall under the Employer Group definition provided that, in the exclusive determination of the State, a) The eligibility and qualification for the group type is permitted under the laws of the state where the policy or certificate are delivered or issued for delivery; b) The group shall not be formed solely for the purpose of providing or obtaining insurance; c) The group has a substantive commonality of interests and purpose apart from, and independent of, providing or obtain insurance with the policyholder interests aligning more closely with the certificateholder than with the interests of the insurance company; and, d) The term Non-Employer Group does not include creditor groups which are outside the scope of this Operating Procedure.

The *Group Operating Procedure* explicitly stated these definitions were for the purposes of this Operating Procedure and the Uniform Standards with explicit direction in the drafting notes *that the definitions in this Section do not create or alter statutory definitions for these groups in the Compacting State where the policy or certificate is delivered or issued for delivery.*

During the development of the *Group Operating Procedure*, regulators commented the definition of employer groups should not be expanded to include multiple employer groups or organizations. For instance, Vermont has a separate statutory definition for a single employer group and a two-or-more employer group, 8 VT. Stat. § 3801 et. seq. The *Group Operating Procedure*, as adopted, limits an “employer group” to a single employer and treats any other group, including a retirement plan sponsored by more than one employer, as a “non-employer group” for purposes of the Uniform Standards.

ERISA Retirement Plans

Each of the retirement plans identified by the ACLI comment letter is a creation of federal law that allows employers meeting certain federal requirements to join together to provide retirement plans to their employees. The intent of multiple employer retirement plans is to provide a cost-effective way for employers to help their employees participate in a retirement savings program without the complexity and burden of a traditional employer retirement plan. The retirement plans themselves are federally regulated; however, the plans often purchase state-regulated insurance and annuities to fund plan obligations.

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for employee benefit plans, including pension and health and welfare plans. ERISA health and welfare plans generally provide coverage for medical services while pension plans or retirement plans provide retirement benefits. Unlike certain health and welfare plans such as multiple employer welfare arrangements (MEWAs), for which section 514(b)(6)(A) provides an exception to ERISA’s broad preemption provisions for the application and enforcement of state insurance laws, no such exception exists for state regulation of retirement plans.

Under ERISA, each of the retirement plans, defined below, is an employer retirement plan and must satisfy ERISA's consumer protections and fiduciary obligations.

Multiple Employer Plan (MEP): a plan sponsored by a bona fide association of employers or a professional employment organization (PEO). By regulation, 29 CFR 2510.3-55, the Department of Labor has interpreted definitional provisions of ERISA to allow a MEP to be established or maintained by a bona fide group or association of employers or by a bona fide PEO. In order to be a bona fide group, there must be commonality between the employers beyond the creation of a retirement plan.

Pooled Employer Plan (PEP): a newer arrangement created by the SECURE Act, which enables the formation of PEPs in plan years beginning after 2020. The SECURE Act allows the broader use of MEPs by authorizing a new type of ERISA-covered defined contribution retirement plan: a "pooled employer plan" operated by a "pooled plan provider." The SECURE Act added sections 3(43) and 3(44) of ERISA to define and authorize these pooled employer plans, which offer benefits to the employees of multiple unrelated employers without the need for any commonality among the participating employers or other genuine organizational relationship unrelated to participation in the plan.

Taft-Hartley Plans: collectively bargained plans between employers and unions. A multiemployer plan is distinct from a multiple employer plan and is a collectively bargained plan maintained by more than one employer, usually within the same or related industries, and a labor union. Taft-Hartley plans address the unique nature of the relationship between a labor union and employers that may cause other arrangements, such as a PEP or MEP, to be impractical.

Next Steps

The Management Committee may wish to consider whether and how to reconcile the terms and definitions in the *Group Operating Procedure*, and pending amendments to the group annuity Uniform Standards, with the terms and definitions associated with ERISA retirement plans.

ACLI submitted a subsequent comment letter on September 16th, 2025, requesting an additional provision be added to the definition of "Employer Group"¹ in the amendments to the group annuity Uniform Standards as follows:

The trustees, fiduciaries, or employer sponsors of a retirement plan adopted by unrelated employers for the benefit of their employees and their beneficiaries.

The adoption of ACLI's requested language would change the effect of the *Group Operating Procedure*, and the operation of the proposed amendments to the group annuity Uniform Standards; in that, insurers would not need to follow any further applicable state requirement for filing and approval of the specific groups that fell under this new language.

The Compact Office, in consultation with the Compact Officers and the Chair and Vice Chair of the Product Standards Committee, suggest another approach to address ACLI's comments. These

¹ The "Employer Group" definition comes from the Group Operating Procedure.

changes provide clarification in the group annuity Uniform Standards since this issue arises due to the use of annuities in retirement plans. The ACLI comments are in response to, and the suggestion pertains only to, the proposed amendments to the group annuity Uniform Standards. The following proposed language is designed to preserve the existing framework in the *Group Operating Procedure*, which allows a state to require filing or approval of specific groups of two-or-more employers, while clarifying these retirement plans are defined under federal law.

PROPOSED CHANGES TO PENDING AMENDMENTS (HIGHLIGHTED IN RED AND UNDERLINED):

With respect to non-employer groups and groups with two or more employers or trustees of employers, approval of a group contract and certificate by the Commission shall not be deemed as approval to use or issue the product to ~~a non-employer~~the specific group. A non-employer group or groups with two or more employers or trustees of employers must be approved or permitted by the Compacting State as required under the applicable state laws and procedures before a product filing approved by the Commission pursuant to the applicable group Uniform Standards may be issued to a non-employer group.

“Employer Group” for purposes of this Uniform Standard is defined to include the following: a) An employer, or the trustees of a fund established by an employer, which shall be deemed to be the Contractholder to insure employees of the employer, and if applicable their dependents, for the benefit of persons other than the employer and must be authorized under the laws of the jurisdiction where the contract or certificate is delivered or issued for delivery.

DRAFTING NOTE: The laws in the Compacting State where the contract or certificate is delivered or issued for delivery apply to whether the groups defined above are authorized to operate in the Compacting State. By categorizing these groups as “Employer Groups” for purposes of this Operating Procedure and Uniform Standards, the definitions in this Section there are not intended to create new groups where none existed or alter statutory definitions for these groups in the laws of the Compacting State where the contract or certificate is delivered or issued for delivery or under federal law, including definitions for retirement plans or government plans.

“Non-Employer Group” for purposes of this Uniform Standards is defined to include group types that do not fall under the Employer Group definition provided that, in the exclusive determination of the State.

- a) The eligibility and qualification for the group type is permitted under the laws of the state where the contract or certificate delivered or issued for delivery.
- b) The group shall not be formed solely for the purpose of providing or obtaining insurance.

- c) The group has a substantive commonality of interests and purpose apart from, and independent of, providing or obtaining insurance with the Contractholder interests aligning more closely with the Certificateholder than with the interests of the insurance company.
- d) The term Non-Employer Group does not include creditor groups which are outside the scope of this Uniform Standard.

For the purpose of this Uniform Standard, trustees, fiduciaries, or employer sponsors of a retirement plan adopted by two or more unrelated employers for the benefit of their employees and their beneficiaries are considered employer plans for purposes of ERISA but are subject to the same procedure as Non-Employer Groups, if required under applicable states laws, of the specific group.