Welcome to the
Meeting of the Rulemaking Committee
Thursday, March 4, 2021

Our meeting will begin shortly.

- All audio will be muted upon entry; Unmute your line to speak
- Enter with video on or off (your choice)
- If you have joined by phone, to mute and unmute your line, press *6
- Please use the chat function if you have issues replying to the roll call or other technical difficulties or questions.

For additional help, please contact Hanna Steen at hsteen@insurancecompact.org

2: Presentations from Industry on Process and Considerations Given When Filing for and Issuing to Non-Employer Groups

Differences between Eligible Non-Employer Group and Discretionary Group (Washington Office of the Insurance Commissioner)

Types of Trusts for Non-Employer Group Life and Disability Income (Milliman)

Non-Employer Group Annuity Considerations including Pooled Employer Groups (Empower Retirement)
Introduction

How Washington OIC reviews non-employer groups for eligibility to purchase L&D Insurance

• Not addressing Health Insurance groups
  • Separate process, due to ACA
• Employers and Labor Unions
  • Taken at face value without substantiating documentation needed.
  • Company may file a product to be used with all Employers and/or Labor Unions in general
    • No single case requirement unless custom/negotiated
WA Statutes Governing Group Type-Life

Associations
- RCW 48.24.045 governs associations
  - Existence for 1 year
  - Constitution and Bylaws
  - Formed for purposes other than insurance

Trusts
- RCW 48.24.070 governs trusts
  - Trust document

Discretionary Group
- 48.24.027 allows for groups “other” than those specifically set forth in statute, at Commissioner’s discretion
- Based on NAIC Model Language
- 3 Prong Test:
  - (a) The issuance of the group policy is not contrary to the best interest of the public;
  - (b) The issuance of the group policy would result in economies of acquisition or administration; and
  - (c) The benefits are reasonable in relation to the premiums charged.
WA Statute Governing Group Disability

RCW 48.21.010 sets forth all groups to which policy may be offered
- Essentially mirrors Group Life statutes
- Covers Associations, Trusts and Discretionary Groups
  - Same requirements for all
  - Same 3-prong test for Discretionary Groups

Filing Requirements - General

All association, trust and discretionary groups must be filed on a single-case basis
- Allows us individual case review
- We review substantiating documents at face value and reserve right to ask for more documents if necessary
- Handled by our Forms reviewers as part of product review
- Once approved, we do not continue to monitor group unless questions/complaints raised
  - HOWEVER, we do require substantiation for every product filing separately
Filing Requirements - Documentation

Associations
• Constitution and Bylaws

Trusts
• Trust document

Discretionary Groups
• Case-by-case
• Could be any legal document substantiating existence of group

Group Review

We review group to ensure it complies with applicable statutes
• Is group established for purposes OTHER than the purchase of insurance? (Education, political advocacy, etc.)
• Has group been in existence for required time period?
• If discretionary, does it comply with 3-prong test?
Out of State Groups

Policy must have been approved in situs state, if required
- We review the certificate to be issued to Washington state residents
- We request a copy of the master policy only for our records – no review

For discretionary groups, “No such group life insurance coverage may be offered under this section in this state by an insurer under a policy issued in another state unless the commissioner or the insurance commissioner of another state having requirements substantially similar to [WA state requirements] has made a determination that the requirements have been met.”

Additional Notes

Blanket Insurance
- Separate requirements under RCW 48.21.040
  - Only six specific types of groups allowed – very strict

Filing Distribution
- Associations more common than trusts
- “Discretionary Groups” rare
  - Usually filed as associations
Questions?

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Tel: 360-725-7126

Group Life and Disability Insurance Trusts  
IIPRC Rulemaking Committee

Stacy Koron, JD, CLU

March 4, 2021
Types of Trust Groups

**Illusory**
- Insurer created and maintained
- For the purpose of selling group insurance
- No real common relationship

**Portability**
- Discretionary group
- Created by insurer
- For the purpose of keeping insurance

**Variants of Other Group Types**
- Multiple employer, creditor, union, association
- Created by a group member, not insurer
- Specifically authorized in most states

**Trusts under NAIC Model Acts 100 and 565:**
- As a part of another group type
- Discretionary Groups

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Group Insurance Coverage
**What happens when an individual's group insurance terminates?**

**Lose Coverage**
- **Conversion**
  - Individual coverage
  - Mandated in life insurance by IIPRC and all states (optional for DI)
  - No underwriting
  - Usually lose riders, simple plan

- **Port**
  - Continue group coverage
  - Market-norm (broker driven)
  - No underwriting
  - May be simplified benefits, may retain others
  - Various ways to set up the port plan
Portability Approaches

Continuation (Orphan Certificate)
- Certificate continues inforce after insured is no longer eligible under the group.
- Premiums paid directly by insured.
- May be contingent upon group policy remaining inforce.
- There are states that have indicated they prefer this approach.

Portability Trust
- Insurer establishes a trust that is the group policyholder.
- At the time insured exercises portability option, coverage under prior plan is severed and insured is issued a new certificate under the group policy.
- Certificate is generally similar to prior plan, but will have additional premium provisions, won’t have portability right, may be simplified benefits.
- There are states that have indicated they prefer this approach.

Group Portability Trust

Definition of Discretionary Group
- 3-prong test:
  - The issuance of the group policy is not contrary to the best interest of the public;
  - The issuance of the group policy would result in economies of acquisition or administration; and
  - The benefits are reasonable in relation to the premiums charged.
- Group approved by situs state or another state having requirements substantially similar to those above.
- Model 565 has additional guidance on premium payment and use of evidence of insurability.
## State Approval

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<th>States Approving Portability Trust Plans</th>
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<td>1</td>
<td>- Have had approvals in 48 jurisdictions</td>
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<td>- About 44 of these consistently approve</td>
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<td>- 1 compact member state has consistently disapproved (CO)</td>
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<th>States Requiring Information Regarding Trust</th>
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<td>2</td>
<td>- 2-4 states require the group be approved before forms are filed. UT and OR always require this and have a process for filing the group separately.</td>
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<th>Form/Rate Filing Requirements</th>
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<td>- In all states, filing explains where the trust is sitused and the limited use of the trust.</td>
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<td>- Approximately 15 states require trust information be provided with the form filing</td>
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<th>Supporting Documentation</th>
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<td>- Trust document, proof of situs state approval</td>
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<td>- OR and UT have checklists</td>
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<td>- Certification of limited use of trust, 3-prong rule</td>
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**Questions?**
Pooled Employer Plans and Group Eligibility Laws

Keith Mancini
AVP Government Affairs
March 4, 2021

Agenda

• SECURE ACT
• Pooled Employer Plans
• Market need for group annuity products
• General overview of group insurance laws
• Application of group insurance laws to PEPs
What is the SECURE Act?

- The Setting Every Community Up for Retirement Enhancement (SECURE) Act passed the House by a vote of 417 – 3 in May 2019 and included most of the provisions found in the Retirement Enhancement and Savings Act (RESA) with some additions.

- In late December, SECURE was incorporated into a year-end budget bill, the Further Consolidated Appropriations Act, 2020 (FCAA).

- FCAA passed the House on December 17, 2019, and passed the Senate on December 19, 2019. The bill was signed into law on December 20, 2019.

SECURE Act Provisions

- The SECURE Act was the first comprehensive retirement plan legislation since the 2006 Pension Protection Act.

- Congress addressed three primary themes in the SECURE Act
  - Lifetime Income
    - Lifetime Income Disclosure
    - Annuity Safe Harbor
    - Annuity Portability

- Increase savings (with other RMD adjustments)
  - Allow IRA contributions after 70.5
  - Push back the required beginning date to 72
  - Accelerate RMDs for non-eligible designated beneficiaries

- Expand Access to retirement system and create flexibility
  - Pooled Employer Plans
  - Coverage of Long-term Part Time employees
  - Qualified Birth and Adoption Distributions
**Pooled Employer Plans**

*Created by the Secure Act, a Pooled Employer Plan (PEP) is a new type of Multiple Employer Plan (MEP) for 401(k) Plans*

- Would allow **completely unrelated employers** to participate in a PEP sponsored by a plan service provider – effective 1/1/21
  - A PEP may be either a qualified defined contribution plan or an IRA.
  - Must have a **pooled plan provider (PPP)** responsible for plan administration and is a **named fiduciary**.

- Employers still have **fiduciary responsibility** over the selection and monitoring of the pooled plan provider and fiduciary responsibility over investments **unless delegated**

- Must have 3rd party trustee (bank/trust company) responsible for payroll monitoring

- A new type of open MEP – does not replace current pooling options

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**Pooled Plan Provider - Requirements**

- SECURE Act and PPP registration regulations **do not restrict who can act as a pooled plan provider**.
  - “The SECURE Act does not limit the class of persons who can act as pooled plan providers, but it is expected that many financial services companies (such as insurance companies, banks, trust companies, consulting firms, record keepers, and third-party administrators) will be pooled plan providers.” – 85 Fed. Reg. 72,936 (November 16, 2020)

- Register with Department of Labor & Treasury through Form PR

- Perform all administrative duties necessary to ensure compliance with ERISA and the Internal Revenue Code

- Monitor whether employers are taking necessary steps to comply with ERISA and the Internal Revenue Code

- Ensure proper bonding
Why Group Annuity Contracts in PEPs?

Things to Note About Group Annuities in Retirement Plans

Retirement Plan Funded Exclusively through Group Annuity Contract

Group Annuity Contract – General and Separate Account
- General/Separate Account SVF
- Separate Account:
  - S&P 500 Var. Annuity Sub-Account
  - Long-term Bond Var. Annuity Sub-Account
  - Intermediate Term Bond Var. Annuity Sub-Account
  - International Fund Var. Annuity Sub-Account

Retirement Plan Funded Partially through a Group Annuity Contract

Group Annuity Contract – General Account SVF
- S&P 500 Mutual Fund
- Long-term Bond Mutual Fund
- Intermediate Term Bond Mutual Fund
- International Mutual Fund
PPP – Group Annuity Contract Issuance

Example

Insurance Company A

Group Annuity Contract

Pooled Plan Provider Z

Employer A

Employer B

Employer C

Employer D

Employer E

Employer F

Group Insurance Law Example—(Nebraska Insurance Statute Section 44-102)

A group life policy in Nebraska may be issued to:
- all of the employees of an employer pursuant to 44-1602 (most 401(k) plans fall under this eligible group)
- debtors of a creditor pursuant to 44-1603
- all of the members of a labor union or similar employee organization pursuant to 44-1604
- a trust or trustees of a fund established or adopted by 2 or more employers or by 1 or more labor unions or similar employee organizations, or by 1 or more employers and 1 or more labor unions or similar organizations to insure employees of the employers or members of the unions or organizations pursuant to 44-1605
- an association of public employees having, when the policy is placed in force, a membership in the classes eligible for insurance of not less than 75% of the number of employees eligible for membership in such classes to insure members of such association pursuant to 44-1606
- a trust or trustees of a fund established for the benefit of members of one or more associations, which association has been in existence for at least 2 years with a membership of at least 100 individuals and which has been organized and is maintained for purposes other than that of obtaining insurance pursuant to 44-1606.01
- a credit union or trust or trustees designated by two or more credit unions to insure members of the credit union for the benefit of persons other than the credit union, trustee, trustees or any of their officials pursuant to 44-1606.02
- a group other than one described above which is approved by the Commissioner pursuant to 44-1606.03
The Issue

- Pooled employer plans went into effect on January 1, 2021.
- Pooled Plan Providers have an interest in group annuity products, especially stable value products.
- State insurance laws do not contemplate pooled employer plans.
- Issuing separate group annuity contracts to participating employers is impractical in a pooled employer plan due to inconsistent versions and PPP contracting expectations.
- Non-employer groups (trustee; association; discretionary) do not cleanly fit pooled employer plans and cause additional extra-territorial filings.
- We expect participating employers across the country will want a homogenized product offering from pooled plan providers. Uniformity is key.
- This regulatory uncertainty has a potential chilling effect on group annuity products in PEPs.

Potential Resolutions

- Alternative #1:
  - State insurance regulators and the Compact should view group annuities issued to PPPs as employer groups so extra-territorial filings would not be required.

- Alternative #2:
  - If a state determines that a PPP is a non-employer group under their statutes, the home state approval should “passport” the approved PPP GAC to other states for informational filing purposes only.
The research, views and opinions contained in this material is intended to be educational; and is not tax, legal, accounting or investment advice.

Empower Retirement refers to the products and services offered by Great-West Life & Annuity Insurance Company and its subsidiaries.

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