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February 14, 2010

The Honorable Max Baucus, Chairman
United States Senate Finance Committee
511 Hart Senate Office Building
Washington, DC 20510-2602

Dear Senator Baucus:

It is understandable that a number of Senators would be sympathetic to the appeals from numerous companies for temporary relief from pension plan funding requirements due to the steep market slide in 2008. The National Retiree Legislative Network (NRLN), which represents the interests of more than 2 million retirees who have retired from 114 companies and public entities, recognizes the plight of these companies. We would not want to force contributions to pension plans that would cause irreparable harm to the companies, trigger layoffs or result in companies declaring bankruptcy.

However, pension plan assets currently held in trust should not be allowed to be used by these same companies to pay for operating expenses. ERISA should be amended to stop companies from using pension assets to make severance payments during a corporate restructuring. These “back door reversions” represent a widespread practice by companies to circumvent the Congressional policy against reverting pension assets for corporate purposes. It simply doesn’t make sense for Congress to authorize a funding hiatus without simultaneously closing this back door.

To better protect the pensions of retirees and future retirees, I urge you to include in the Senate's pension funding relief bill language similar to the provisions that are in Section 111 (pages 65 and 66) of H.R. 3936, the Preserve Benefits and Jobs Act of 2009, sponsored by Representatives Earl Pomeroy and Pat Tiberi.

The language in Section 111 relating to a company's ability to amend its pension plan, in part, states: *"No ad hoc amendment to a defined benefit plan which is a single employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate of which benefits become nonforfeitable may take effect during the plan year if the adjusted funding target attainment percentage for such plan year is— "(I) less than 120 percent, or "(II) would be less than 120 percent taking into account such amendment."*

An increasing number of companies have tapped pension assets to pay for lump sum payments equal to six (6) months or even twelve (12) months pay to employees who agree to retire within a specific time window. In 2001 and 2002, a struggling Lucent Technologies charged \$2.2 billion in lump sum “termination benefits” to its various employee pension plans. More recently, GM used \$2.9 billion in pension assets to make lump sum severance payments during 2008 – and ended the year with a \$12.4 billion pension deficit (\$20 billion by PBGC calculations). AT&T, Bethlehem Steel, Chrysler, Consolidated Freightways, Delphi, Delta Air Lines, Federal Express, Polaroid, Qwest, United Airlines, Verizon and many other corporate plan sponsors have raided pension assets with impunity and used those assets to cover their business restructuring expenses.

These back door reversions are not offset by corresponding reductions to pension liabilities and are gone forever. This practice places pension plans at risk to be terminated. It is past time to end this pilfering of defined plan pension assets. These actions threaten the security of pension plans and the potential is great that the Pension Benefits Guaranty Corp. (PBGC) might have to take over the plan in the future. Furthermore, depleted assets reduce the likelihood the plan will ever generate surplus assets that can be used to offset corporate health care costs for retirees or be available for pension Cost of Living Adjustments (COLAs), a benefit that non-government retirees seldom receive.

The NRLN has researched and written a whitepaper on how companies are misusing pension plan assets and provides our proposed amendments to the Pension Protection Act of 2006 to prevent the abuses. I have attached the Executive Summary from the whitepaper. If you would like to receive a copy of the entire whitepaper, please contact Marta Bascom, the NRLN's Executive Director, on (703) 863-9611 or by email at marta.bascom@linkspace.net .

The Senate has an opportunity for a quid pro quo—companies receive temporary funding relief and retirees gain the protection of their pension assets from being used for non-pension expenses. Please don't miss this opportunity to provide for the financial security of America's retirees. NRLN members who are Montana residents have retired from AT&T, Alcatel-Lucent, Chrysler, Delta Air Lines, General Motors, Qwest and NRLN individual members retired from many other companies will appreciate your support on this matter.

Sincerely,



President, National Retiree Legislative Network

Attachment

Copy to: Tom Reeder



Back Door Reversions: **Draining Pension Assets for Severance and Other Corporate Purposes Threatens Retirement Security** **Executive Summary**

The use of pension assets to make severance payments during a corporate restructuring is the largest and most widespread “back door reversion” by which some companies are seeking to circumvent the Congressional policy against reverting pension assets for corporate purposes. When pension funds were used to finance hostile takeovers and the mass layoffs that typically followed, in 1990 Congress stopped the practice by imposing a 50 percent excise tax on pension reversions. But today’s “back door reversions” are more insidious. Although ERISA explicitly prohibits the use of qualified pension assets for “layoff benefits,” companies can amend a plan at any time not merely to offer older workers enhanced early retirement benefits (by awarding extra years of service credit), but even to offer lump sum severance payments equal to a year’s salary or more as part of a corporate restructuring.

The 2006 Pension Protection Act tightened up on this practice somewhat by requiring plan sponsors to pre-fund a plan amendment that increases benefit liabilities to the extent the plan’s funding level would fall below 80 percent (after taking account of the new benefit liability). However, as the 2008 stock market meltdown demonstrated, a plan that is only 80 percent funded during a bull market could easily end up below 60 percent funded in a bear market – and in default with the PBGC if the plan sponsor declares bankruptcy. Moreover, any significant reduction below full funding not only leaves all plan participants insecure, it also reduces the ability of the plan to build a surplus that could be used to grant cost-of-living adjustments to longtime retirees, whose fixed monthly benefits erode with inflation, or to offset the cost of retiree health benefits through a Section 420 transfer.

The trend toward distressed companies using employee pension assets to pay severance costs – instead of relying on a restructuring reserve or other corporate assets – is not new to the current financial crisis. Lucent, United Airlines, AT&T, Verizon, Qwest, Federal Express, Delta and Delphi are among the other companies that have tapped pension assets to pay corporate restructuring costs. Some of these companies drained pension assets for severance payments as they spiraled downhill toward bankruptcy and an eventual taxpayer bailout courtesy of the PBGC. Other companies, left under-funded, cut other retiree benefits across the board. And some others, although their plans remained solvent, used up “surplus” assets that could have benefitted the vast majority of plan participants if used instead for cost-of-living adjustments or offset the cost of retiree health care benefits. In the current crisis, General Motors used pension assets to pay for billions in severance payments during 2008 – and ended up with such a dangerous degree of under-funding that in early 2009 the Treasury Department restricted the practice as a condition of the federal bailout loan package.

The most effective way for Congress to protect plan participants (and taxpayers) from unfunded liabilities from severance, layoff or any other benefit increase is simply to increase the target funding level threshold required for unfunded benefit increases and lump sum payouts from the 80 percent level, currently required under the PPA, to 120 percent. Severance or other benefit increases to selected individuals that are not funded should be paid out of the company’s operating expenses, not from the pension trust. This would not limit the ability of plan sponsors to enhance benefits. What it does do is require companies to currently fund lump sum payouts or other benefit increases that would otherwise cause the plan to become under-funded or worsen its level of under-funding. Amendments increasing benefits that are collectively bargained or negotiated between a plan sponsor and bona fide union representatives, or in the context of a jointly-trusted Taft-Hartley plan, should be exempted from this more restrictive funding level.