NRLN
NATIONAL RETIREE
LEGISLATIVE NETWORK

Defined Benefit Pension Plan Mergers

Protecting Vested Pension Benefits from Plan Asset Transfers

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Talking Points

- Tens of millions of U.S. employees and retirees depend upon company fiduciaries and the rules of ERISA to protect their accrued pension benefits since they do not own their assets.
- Insolvency and bankruptcy can lead to distress terminations – which result in the permanent loss of vested benefits for many retirees and other participants under the PBGC's priority category system.
- The NRLN is concerned about a new form of financial engineering: the merging of pension plans as part of a strategy to benefit the plan sponsor by combining plans with very different levels of plan assets and liabilities.
- Merging pension plans can be beneficial to plan sponsors and harmless to participants, such as when companies merge two well-funded plans to reduce administrative costs. However, defined-benefit plan mergers can also be very damaging to the vested rights of plan participants.
- PBGC not only lacks advance notice of intra-firm mergers, the agency has waived the requirement for post-event reporting of plan mergers despite the fact that Section 1343(c)(8) specified that *all* plan mergers are reportable events and that ERISA Section 414(l) explicitly mandates that the participants and beneficiaries in the higher-funded plan be held harmless if PBGC takes the merged plan over after a distress termination.
- It is clear is that some plan sponsors have both the ability and incentive to engineer plan mergers in ways that increase the risk of permanent benefit losses for retirees. NRLN proposes the following changes:

➢ Advance Notice of Reportable Events: All mergers of two or more qualified plans should be reportable events, as ERISA originally required, and included among the transactions that require an Advance Notice of Reportable Events to the PBGC.

➢ Pre-Approval Process: Plan mergers should be reviewed by the PBGC and IRS and challenged as appropriate. Challenging or denying a plan merger should include: (i) if a plan merger has the effect of substantially reducing the sponsor's overall minimum funding requirement; or (ii) if the merged plan's Funding Target Attainment Percentage (FTAP) imposes substantial risk on participants in the higher-funded plan (e.g., FTAP falls below 80%, or by 10 percentage points or more).

➢ A Plan Merger Should Not Reduce the Minimum Funding Contribution During PBGC's 5-Year Hold Harmless Protection Period: Although plan mergers can improve administrative efficiency, some are done to further reduce the company's minimum required contribution even more than permitted under the MAP-21 "funding relief" provisions adopted by Congress and extended through at least 2020. A plan merger that substantially reduces funding contributions overall raises the risk of a distress termination and harms retirees.

NRLN proposes that for a period of five years following a plan merger, the plan sponsor's minimum annual funding contribution should be no less than what the company would have contributed if the plans had not merged. This change tracks and reinforces the PBGC's 5-year "hold harmless" protection. ERISA Section 414(l), the PBGC applies its Priority Category allocation of benefits in a manner that ensures participants in the higher-funded plan do not lose vested benefits following termination of the merged plan that would have been funded based upon the pre-merger assets and funding level of their plan.

➢ Scrutiny in Distress Terminations: For a period of five years after a qualified plan merger, the PBGC should be required to oppose any proposed distress termination of the merged plan unless the plan sponsor can establish, to the satisfaction of the agency or a court in bankruptcy, that a distress termination would have been justified at the pre-merger funding level.

For an NRLN whitepaper on this subject, contact Alyson Parker at 813-545-6792 or executivedirector@nrln.org