NRLN
NATIONAL RETIREE
LEGISLATIVE NETWORK

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March 12, 2010

The Honorable Sander Levin, Acting Chairman
Ways & Means Committee
United States House of Representatives
1236 Longworth House Office Building
Washington, DC 20515-2212

Dear Representative Levin:

As President of the National Retiree Legislative Network (NRLN), I am writing to urge you to work toward the inclusion of a provision in pension funding relief legislation to prevent the widespread practice of "back door reversions" that companies use to circumvent the Congressional intent against reverting pension assets for corporate purposes.

There is a provision, 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, which would do this in a manner which would not prohibit the practice but would ensure that pension plans are not destabilized.

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."*

The NRLN does not want to force corporate contributions to pension plans that would cause irreparable harm to the companies, trigger layoffs or result in companies declaring bankruptcy. The pension asset protection provision would not eliminate the practice of lump sum payments but would simply ensure that plans are well-funded before such transfers can take place. The circumstances which have companies coming to Congress for relief are the same circumstances which have plan participants – especially retirees – wanting to ensure that pension assets are protected.

Retiree association presidents and board members from Qwest, General Motors, Chrysler, John Deere, Delphi, Raytheon, Alcatel-Lucent, AT&T, Aetna, Prudential and other U.S corporations who attended the NRLN's annual conference this January in Washington, D.C. expressed their frustration with Congress' inaction in the face of the decimation of U.S. pension plans and we ask you to personally stand up for your retiree constituents. These retirees were leaders in their former companies and they see Congress as being conflicted between the interests of corporations and those of plan participants. Protecting pension plan assets and termination liabilities should be quintessential reasons for even considering funding relief. None of the other tag-along amendments require that companies respond with any promises to protect pension plan assets that would also help protect the solvency of the PBGC.

If there is some reason why Congress would not want to include long-term pension asset protection in the current pension relief language, the NRLN's more than 2 million members really need to know. Plan participants don't believe that their pensions are safe under current corporate practices, and the last decade has shown that their fears are well-founded. While the relief being given to corporations is temporary, it is a benefit that they have received two years in a row. In the meantime, companies remain able to utilize pension assets for purposes other than those originally intended by Congress.

I am attaching the Executive Summary from a white paper by the NRLN which documents how companies are misusing pension plans. If you have any questions, please contact Marta Bascom, the NRLN's Executive Director, at (703) 863-9611 or by email at marta.bascom@linkspace.net .

Exercising your leadership to provide for the protection of pension assets will not only be appreciated by the NRLN's more than 2 million retirees from 114 companies and public entities, but will be valued by all American retirees.

Sincerely,

Bill Kadereit

President, National Retiree Legislative Network

Attachment

Copy to:

House Ways & Means Committee Members

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-trusteed Taft-Hartley plan, should be exempted from this more restrictive funding level.

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