NRLN
NATIONAL RETIREE
LEGISLATIVE NETWORK
10 Years of Progress, 2002 - 2012

Mergers, Acquisitions and Spin-offs

Protecting Retirees from Financial Harm

Talking Points:

- In this era of globalization, the impact on pension and other benefits, corporate responsibilities are murky and need clarification and strengthening to protect retirees.
- There are increased risks to pension funds under foreign ownership.
- Corporations have used the spinoffs, mergers, and sales of corporate segments and subsidiaries to deplete pension plans, practices which currently remain legal.
- The Pension Benefit Guaranty Corporation (PBGC) needs better tools and greater authority to protect pensions and avoid government liability and cost to taxpayers.
- The PBGC's Early Warning Program should be expanded to allow for the review of spin-offs and sales to non-U.S. firms.

The NRLN recommends five changes for legislation, regulatory reform and stepped-up enforcement:

1) Congress needs to clarify that the PBGC has the authority to enforce a lien against <u>all</u> U.S.-based assets of the parent company of a foreign-owned plan sponsor even if those other assets or subsidiaries are not considered part of the controlled group sponsoring the plan.

2) The Department of Labor should revise its regulations related to breaches of fiduciary duty to clarify that fiduciaries under ERISA – at a minimum contributing sponsors and "named fiduciaries" – must be subject to the jurisdiction of federal district courts with respect to the enforcement of judgments for potential breaches of fiduciary duty.

3) Congress should give regulators broader and more flexible authority under § 4042(a) to negotiate or seek court approval for a more tailored remedy, short of plan termination, to address spin-offs, mergers, or other transactions that greatly increases the risk of future loss to the PBGC and participants.

4) Congress should expand the events that trigger immediate liability for pension underfunding pursuant to Section 4062(e), calculated on a termination basis, to include transactions that pose even greater risk to *all* plan participants. Triggers should include spin-offs, control group break-ups and takeovers by foreign firms that transfer more than 20% of a firm's under-funded plan liabilities, or which transfer more than 20% of the plan sponsor's assets or revenues without obligation for funding plan liabilities.

5) The PBGC should add foreign ownership, and proposed sales or spin-offs to foreign owners, along with such transactions among U.S. corporations, to the list of transactions triggering special scrutiny under the PBGC's Early Warning Program and, if possible, to the list of transactions requiring an Advance Notice of Reportable Events.

For a copy of an NRLN whitepaper on this subject, contact Marta Bascom at 703-863-9611 or marta.bascom@linkspace.net