



Pension Asset Protection (PAP)

Protection Against Back Door Reversions

Talking Points:

The Supreme Court decided in the *Hughes Aircraft* decision that ERISA can be interpreted to allow the use of pension plan assets to pay for corporate restructuring expenses equal to six (6), twelve (12) or more months in severance or extra lump sum payouts to employees who agree to retire early, even if only a small number of plan participants are eligible for them.

After the *Hughes* decision, more companies began to tap pension asset to fund lump sum severance payments. Lucent, U.S. Air, AT&T, Verizon, Qwest, Federal Express, Delta, Delphi and General Motors are companies that have tapped pension assets to pay such restructuring costs. Months or years later, tumbling equity markets and economic recessions precipitated underfunding and terminations of pension plans.

The NRLN proposes that Congress amend ERISA and the 2006 Pension Protection Act (PPA):

- to protect plan participants, taxpayers and the Pension Benefit Guaranty Corporation (PBGC) from unfunded liabilities for severance or layoff benefits, increase the target funding level threshold required for unfunded benefit enhancements paid out in a lump sum to subsets of terminating employees from the 80 percent level, currently required under the PPA, to 120%. A 120% funding level restriction would be consistent with the IRS Section 420 limitation on transfers of surplus pension assets to fund retiree health benefits.
- to require that severance or other lump sum benefit increases to selected individuals that are not funded should be paid out of the company's operating expenses, not from the pension trust.
- to exempt plan amendments that are collectively bargained between a plan sponsor and certified union representative, or in the context of a jointly-trusted Taft-Hartley plan, from this more restrictive funding level.

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