Protect Retirees from Pension Plan Benefit Recoupment

2/25/2019

<u>Proposal Talking Points:</u>

The Wall Street Journal and other news media have disclosed that there are many pension recoupment examples and that there is an obvious need for a more equitable approach to recouping benefit overpayments. Plan participants are obligated to pay for plan sponsor or third-party contractor pension calculation errors.

Benefit payment errors are common and predictable; caused by force reductions, bad data input, calculation errors, pension plan combining, increased de-risking cleanup, etc. It may be years before an audit finds such errors. Most retirees are oblivious to such errors.

ERISA language and Department of Treasury guidance mandates that plan sponsors recoup following confusing rules in deciding a dollar amount and the amount of time required to recoup overpayments. Multiple variables leave room for illogical and inconsistent treatment.

One practice, time-barring or establishing arbitrary time windows that protect companies from full culpability is how corporate HR and legal employees construe equity. Deciding to set a recoupment statute of limitations would be irrational and illogical recoupment policy.

Barring gross negligence, recoupment dollars amount to less than a 0.5% change in plan liabilities. In the Fiat-Chrysler (FCA) recoupment case, liabilities changed less than $1 million on $6.5 billion asset base, less than 0.1%. An Aug. 3, 2018 Wall Street Journal article that an AT&T spokesman said pension overpayments affect “significantly less than 1/10th of 1%” of its about 517,000 participants.

The NRLN proposes to indemnify individual plan participants. While plan sponsors or Third-Party Administrators (TPA’s) could purchase an Errors and Omissions Insurance a more efficient remedy would be to instruct actuaries to <u>account for recoupment as a plan funding risk that would require very small adjustments to plan actuarial calculations.</u>

We have met with the Employee Benefits Security Administration (EBSA) and Department of Treasury staffs’ and proposed that they take action to issue rules clarifications that would enable plan participant indemnification through actuarial adjustments. As a matter of fact, overpayments increase funding liability as paid that most actuaries would agree have already been accrued for - when plan sponsors meet calculated annual minimum funding obligations.

We endorsed a letter to Secretary of Treasury Steven Mnuchin from Congressman Richard Neal, Chairman, Committee on Ways and Means requesting coverage of the Employee Plans Compliance Resolution System (EPCRS); employers could elect to pay then apply recoupment dollars as credits to “minimum funding requirements”. We ask that you also write to Secretary Munchin in support of plan participant indemnification that would require inclusion of actuarial adjustments, annually.

If the above remedies fail to create changes that indemnify participants then we ask that you introduce an amendment to ERISA that would provide indemnification.

For more information on this subject, contact Alyson Parker at 813-545-6792 or <u>executivedirector@nrln.org</u>