NRLN
NATIONAL RETIREE
LEGISLATIVE NETWORK

Protecting Retiree Benefits in Bankruptcy

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Talking Points:

Tens of millions of American retirees on fixed incomes rely on earned benefits from their former employers for retirement income, critical medical treatment, and essential benefits for their survivors. Unfortunately, a growing number of retirees and older workers are finding that these benefits are the first things lost when their former employer files for bankruptcy.

Unfortunately, large bankruptcy cases in recent years have highlighted (or even created) tragic shortcomings or loopholes in those protections, demonstrating the urgent need for legislative reform. Because of current gaps in (and misinterpretations of) existing statutes, retirees often receive little or limited protection of their benefits.

Additional reforms are needed to level the playing field and protect the reliance of millions of retirees on vested benefits earned over a lifetime of work.

NRLN Proposed Changes to the Status of Retirees in Bankruptcy Law:

- The statute should be amended to require prompt appointment of a Section 1114 committee to represent retirees in large bankruptcy cases within 60 days after the bankruptcy petition is filed and to ensure that at least the largest of the established retiree organizations representing a substantial number of the non-union-represented retirees is appointed to the Committee.

- Congress should further revise Section 1114 of the Bankruptcy Code to clarify that the protections of retiree health and welfare benefits do indeed extend to "any plan, fund, or program" providing those benefits (as Congress intended, but some courts have ignored), not only those benefits a debtor failed to reserve the right to modify outside bankruptcy.

- In addition, Congress should amend Section 1114 to give bankruptcy court judges the discretion to expand the power of a retiree committee to negotiate over claims for termination of non-qualified pension benefits in appropriate cases.

- Congress should provide that if a plan sponsor in bankruptcy is permitted to terminate its qualified pension plan, then the Department of Labor or the PBGC can make a *priority claim* on behalf of plan participants and beneficiaries to recover the vested but unfunded benefits that will *not* be guaranteed by the PBGC (after distribution of assets in the plan as of the termination date). This would add a category to the list of unsecured claims that receive priority payment pursuant to Bankruptcy Code Section 507(a)(4).

- Congress should generally require the continued minimum funding of defined benefit pension plans during a bankruptcy and explicitly provide that if those minimum contributions are not made, that claims by the pension trust or by the government on its behalf shall receive priority as an administrative expense under Bankruptcy Code Section 503(b).

- Parallel to the protections for small business creditors that Congress has already added in Bankruptcy Code Section 1102(a)(4), to ensure a representative creditors committee, Congress should give bankruptcy courts the flexibility to allow a retiree representative on the creditors committee, in addition to any PBGC representation, particularly where unions have specifically declined to represent their retirees in negotiating over benefits.

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