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**The NRLN advocates the rights of more than 2 million American
retirees from...**

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September 1, 2020

The Honorable Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-1304

Dear Senator Durbin:

On behalf of the more than 2 million retirees and future retirees represented by the National Retiree Legislative Network (NRLN), I am writing to thank you for introducing the Protecting Employees and Retirees in Business Bankruptcies Act of 2020 (S.4089). The NRLN sincerely appreciates your longstanding efforts to protect workers and retirees who too often lose benefits during the bankruptcy process that were earned over years and even decades of hard and loyal service.

The NRLN likes S.4089, but we would like to see amendments to the bill to add the additional protections for older workers and retirees described below.

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. Retirees typically plan their retirement security on the continuation of these benefits. Unfortunately, a growing number of retirees and older workers are finding that these critical benefits are the first things lost when their former employer files for bankruptcy.

When retirees lose benefits in a bankruptcy they don't ever get them back, even when the economy or the company's fortunes improve. Unlike suppliers, lenders, and other stakeholders who can diversify their risk – or who can recoup a portion of their losses out of future dealings with the restructured company – retirees typically suffer a permanent loss of those benefits. And even when the Pension Benefit Guaranty Agency (PBGC) takes over a bankrupt company's pension plan, PBGC data show that a pension benefits are permanently reduced by 30% or more for a substantial number of participants.

While the NRLN generally supports the reforms you propose in S.4089, we urge you to go further to restore Congressional intent and further extend protections for retirees by including the following additional provisions:

First, the statute should require the 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. Section 1114 should also be revised 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.

Second, Section 1114 should also be revised to clarify that the protections of retiree health and welfare benefits do indeed extend to “any plan, fund, or program” providing those benefits during the bankruptcy process (including health, dental, life insurance, disability and survivorship benefits), as Congress intended, and not only those benefits a debtor failed to reserve the right to modify outside bankruptcy.

Third, S.4089 should provide that if a plan sponsor in bankruptcy is permitted to terminate its qualified pension plan, then 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. This would add a category to the list of unsecured claims that receive priority payment pursuant to Bankruptcy Code Section 507(a)(4).

Fourth, the bill should 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).

Finally, we believe that like the protections for small business creditors that Congress 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.

The NRLN believes these modest changes to existing law recommended will restore a large measure of procedural fairness, level the playing field, and mitigate the loss of critical retiree benefits that millions of retirees worked decades to earn.

Your consideration on these issues would also be appreciated.

Sincerely,



Bill Kadereit, President

National Retiree Legislative Network

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