

\_\_\_ CONGRESS  
\_\_\_ Session

# H.R. \_\_\_\_\_

To amend title I of the Employee Retirement Income Security Act of 1974 to provide protection for company-provided retiree benefits.

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IN THE HOUSE OF REPRESENTATIVES

Date: \_\_\_\_\_

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide protection for company-provided retiree benefits.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Retirement Restoration Act of 2022”.

### **SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS. – The Congress finds the following:

(1) Retired participants of pension and welfare benefit plans regulated by the Employee Retirement Income Security Act of 1974 (ERISA) are at serious risk of post-retirement pension risk transfers

and the cancellation or reduction in the scope and/or quality of earned lifetime health insurance and company sponsored group life insurance benefits.

(2) Plan sponsors have been offloading their defined benefit plans via pension de-risking transactions and transferring risk to insurance companies that are not subject to ERISA causing retirees to lose all of the uniform protections intended by Congress and subjecting retirees to non-uniform and inconsistent state laws.

(A) Pension de-risking transactions undermine ERISA's protective purpose and divest retirees of PBGC coverage, deny retirees ready access to the Federal Courts and eliminate important disclosure requirements and fiduciary standards that were afforded pensioners under ERISA.

(B) Once a pension is converted into a group annuity contract, retirees' pension payments may be subject to creditor claims under non-uniform state laws.

(C) Insurance companies that take over pension payments should be held to the same fiduciary standards Congress intended under ERISA.

(D) Defined benefit Plan Sponsors should not be allowed to escape liability due to the passage of time should an insurance company fail to meet its payment obligations to retirees.

(3) Many plan sponsors abuse reservation of rights clauses and target seniors in a predatory and discriminatory manner by terminating or reducing earned welfare benefits after committing to lifetime coverage.

(4) Such discriminatory post-retirement cancellation or reduction in retiree welfare benefits preys upon seniors who lack funds, depletes family resources and shifts the burden of finding alternative coverage to retirees many of whom:

(A) have difficulty procuring reasonably equivalent substitute coverage when they lose group plan coverage or, in order to obtain reasonably equivalent individual coverage, have jeopardized their economic security in retirement;

(B) cannot obtain substitute coverage that they can afford without suffering economic hardship;

(C) have been unable to obtain adequate equivalent medical care or medical care they had previously relied upon to treat or prevent serious medical conditions or illnesses;

(D) have sustained catastrophic illnesses or injuries or otherwise experienced a marked deterioration in their medical condition or health as a result of post-retirement changes to their medical benefits;

(E) have been transferred indiscriminately into improperly or inadequately managed health maintenance

organizations or other managed care entities, resulting in the worsening rather than improvement of prior medical conditions;

(F) no longer qualify for life insurance coverage or cannot afford replacement coverage;

(G) in many instances, have failed to obtain adequate relief in the courts due to highly restrictive and subjective judicial interpretations of reservations of rights provisions which are discriminatory in nature and inconsistent with ERISA's underlying and uniform protective purposes.

(5) The crisis retirees face due to the loss of earned benefits is being largely ignored. Plan sponsors look to gut retiree earned benefits as they simultaneously raise executive compensation and favor executive, management or other current employee coverage and benefits, even though retiree coverage was earned and bargained for in exchange for lower salaries and other cash or cash equivalent compensation. The common practice of post-retirement cancellations or reductions of previously vested and earned retiree welfare benefits has led to a wide-spread loss of confidence in the integrity of ERISA-regulated group retirement plans and the ability of ERISA itself to adequately protect retiree welfare benefits in a uniform fashion as intended by Congress.

(6) A strong and dependable private sector retiree welfare benefit system is a necessary component to the essential health of our nation's senior citizens and the financial well-being of their dependents.

(b) PURPOSES. –

(1) IN GENERAL. – The purposes of this Act are to ensure that retiree earned benefits are protected as intended by Congress under ERISA, to minimize the cost, expense, incidence and uncertainty associated with prolonged legal disputes arising out of the post-retirement cancellation or reduction of earned retiree pension and welfare benefits from such plans, and to prevent further adverse effects on retiree health arising from such discriminatory post-retirement changes that unfairly target seniors.

(2) FUTURE SAFEGUARDS AND ENFORCEABLE OBLIGATIONS. – To carry out the purposes described in paragraph (1):

(A) The provisions of this Act safeguard retiree pensions and retired participants of group welfare benefit plans subject to ERISA from excessive loss or reduction of their health benefits from such plans by limiting the extent to which plan sponsors can cancel offload or reduce earned benefits after the dates such participants retire and when they no longer are able to absorb such losses or reductions without

experiencing adverse effects on their health or finances. Earned benefits include pension benefits, Healthcare benefits including Medicare Supplemental benefits and group life insurance policies.

(B) The provisions of this Act also establish an enforceable obligation on the part of sponsors of such group health plans to restore reasonably equivalent healthcare benefits taken away from retired participants of such plans to the extent such benefits were cancelled or altered in a discriminatory manner after the dates such participants retired. The obligation to restore benefits shall not apply in circumstances where the plan sponsor is likely to sustain substantial business hardship by restoring such benefits, or in circumstances where the benefit reductions were negotiated in connection with a plan that was subject to a collective bargaining agreement.

#### PART 4 – FIDUCIARY RESPONSIBILITY

(B) with respect to each insurer identified under subparagraph (A) –

(i) considers the financial capability of such insurer to satisfy its obligations under the guaranteed retirement income contract taking into consideration:

A. Whether or not the selected insurer is properly reserved under Statutory Accounting Principles (“SAP”) in all States where the insurer does business taking into consideration the extent to which the selected insurer has taken credit for reinsurance with wholly owned captive reinsurers or affiliates that do not file annual statements in accordance with SAP.

B. Whether or not the selected insurer has significant exposure to affiliated reinsurers located outside of the United States.

(2) FINANCIAL CAPABILITY OF THE INSURER A fiduciary will be deemed to satisfy the requirements of paragraphs (1) (B)(i) and (1)(C) (i) if-

(III) the insurer has not taken reserve relief credit for reinsurance with wholly owned captive reinsurers or affiliates that do not file audited financial statements in accordance with the laws of the domiciliary State of the insurer under applicable statutory accounting principles (“SAP”);

(IV) the insurer maintains (and has maintained) reserves which satisfy all of the statutory requirements of all States where the insurer does business; and

(V) the insurer is not an impaired insurer or is not operating under an order of supervision, rehabilitation, or liquidation;

Sec. 418 Limitations on actions.

Sec. 418 shall be amended to include the additions of subsections (3) and (4) below:

; and

(3)

All statutes of limitations are tolled with respect to all pension de-risking transactions involving the purchase of a group annuity contract for some or all plan participants that is governed under state law until such time as the last pension benefit payment is made; and

(4)

All statutes of limitations are permanently tolled with respect to all retiree welfare benefits that are lost after a corporate spinoff results in a reduction in retiree welfare benefits including health insurance benefits and life insurance benefits.

### **SEC. 3. RETIREE HEALTH BENEFIT PROTECTIONS IN GROUP HEALTH PLANS.**

(a) IN GENERAL. – Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end of the following new part:



**“PART 8 – ANTI-DISCRIMINATORY RETIREE  
BENEFIT PROTECTIONS**

**“SEC. 801. PROHIBITION AGAINST DISCRIMINATORY  
POST-RETIREMENT REDUCTIONS OF  
RETIREE HEALTH BENEFITS BY GROUP  
HEALTH PLANS.**

“(a) IN GENERAL. – Notwithstanding that a group health plan described in subsection (b) may contain a provision reserving the general power to amend or terminate the plan or a provision specifically authorizing the plan to make post-retirement reductions in retiree health benefits, the benefits provided to a retired participant or his or her beneficiary under the terms of the plan may not be reduced, whether through amendment or otherwise, if such reduction of benefits occurs after the date the participant has retired for purposes of the plan, and such reduction unfairly discriminates against retirees as opposed to other covered plan participants. Any group health plan provision which is purported to authorize the reduction or termination of benefits in a manner inconsistent with the preceding sentence shall be void as against public policy.

“(b) GROUP HEALTH PLAN. – For purposes of this Act, the term ‘group health plan’ has the same meaning as in section 607(1).

“(c) PROHIBITED DISCRIMINATORY REDUCTION OF BENEFITS. – For purposes of this part, any reference to a discriminatory reduction of benefits shall be construed to be a reference to any amendment to a group health plan, or to any other action, which has the effect of –

“(1) cancelling, decreasing, or limiting the amount, type, or form of any benefit or option provided prior to the amendment or action in a discriminatory manner;

“(2) imposing or increasing discriminatory out-of-pocket costs that a retired participant, or his or her beneficiary, must pay in order for benefits that were provided under the plan to the participant or beneficiary prior to the amendment or action to be provided to the participant or beneficiary after the amendment or action;

or

“(3) modifying the manner by which medical services are delivered under the plan so that after the amendment or action a retired participant, or his or her beneficiary, has less ready access to the delivery of any such medical services than the participant or beneficiary had prior to the amendment or action and such modification is discriminatory as to the retired participant.

“(d) TREATMENT OF PLAN TERMINATION. –

“(1) IN GENERAL. – Subject to paragraph (2), a termination of a group health plan shall be treated as a reduction in benefits prohibited under subsection (a) if, after the termination, the plan sponsor of the terminated plan fails to continue to provide to the participants who retired prior to the termination and to their beneficiaries the same retiree health benefits that were provided prior to the termination.

“(2) WAIVER. – Paragraph (1) shall not apply in the case of the termination of a group health plan if the Secretary issues a waiver under this paragraph in connection with such termination. The Secretary shall issue such a waiver if and only if the plan sponsor demonstrates to the satisfaction of the Secretary, in accordance with regulations prescribed by the Secretary, that such plan sponsor will be suffer substantial hardship unless such a waiver is issued’

“(3) “This amendment shall not limit any rights of a union under a collective bargaining agreement to reduce, limit or otherwise alter group health plan benefits to retirees provided that such collective bargaining

agreement permits such reductions, limitations or alterations.”

**“SEC. 802. ADOPTION BY GROUP HEALTH PLANS OF  
PROVISION BARRING DISCRIMINATORY  
POST-RETIREMENT REDUCTIONS IN  
RETIREE HEALTH BENEFITS.**

“Each group health plan which provides, as of the date of a participant’s retirement under the plan, benefits after such date with respect to such participant or his or her beneficiaries shall contain a provision which expressly bars any discriminatory reduction in such benefits after such date, either under the terms of the plan or by any fiduciary of the plan. Discriminatory shall mean inferior treatment and reductions impacting retirees when compared to other plan participants including current employees, executives and management.

**“SEC. 803. EFFECT ON OTHER CLAIMS.**

“(a) OTHER CLAIMS UNAFFECTED.— Nothing in this part shall be construed to alter, impair, or eliminate any claim for retiree health benefits based on conduct alleged to violate the terms of a group health plan, any provision of this Act (other than this part), or both, regardless of whether such conduct occurred prior to, on, or after the date of the enactment of the Retirement Protection Act of 2021.

“(b) OTHER CAUSES OF ACTION NOT AUTHORIZED. – Nothing contained in this part shall be construed to authorize any action for recovery of retiree health benefits unless the conduct giving rise to the claim for recovery is alleged to violate the provisions of this part.

**“SEC. 804. REGULATIONS.**

“The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this part. The Secretary may promulgate any interim final rules as the Secretary deems are appropriate to carry out this part.”.

(b) CIVIL PENALTY. – Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended –

(1) by re-designating the second paragraph (10) (relating to consultation between the Secretary of Labor and the Secretary of Health and Human Services) as paragraph (12); and

(2) by inserting after the first paragraph (10) the following new paragraph:

“(11) The Secretary may assess any person a civil penalty of not more than \$50,000 with respect to each failure by such person to meet the requirements of section 801 or 802 with respect to each participant or beneficiary aggrieved by such failure.”.

(C) CONFORMING AMENDMENT – The table of contents in section 1 of such Act is amended by inserting after the item relating to section 734 the following new items:

“PART 8 – EMERGENCY RETIREMENT PROTECTIONS

“Sec. 801. Prohibition against discriminatory post-retirement reductions of retiree health benefits by group health plans.

“Sec. 802. Adoption by group health plans of provision barring discriminatory post-retirement reductions in retiree health benefits.

“Sec. 803. Effect on other claims.

“Sec. 804. Regulations”.

**“SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall take effect on the date of the enactment of this Act, except that section 802 of the Employee Retirement Income Security Act of 1974 (as added by section 3 of this Act) shall apply with respect to plan years beginning after 180 days after the date of the enactment of this Act. Compliance with the requirements of part 8 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 with respect to a group health plan shall not be treated as a failure to comply with the terms of such plan.