



October 5, 2022

VIA EMAIL

- AND -

VIA FIRST CLASS MAIL

The Honorable Senator Sherrod Brown
503 Hart Senate,
Office Building
Washington, DC
20510

Attn: Trudy Perkins, Sen. Brown Acting Chief of Staff (trudy_perkins@brown.senate.gov)

Jeremy Hekhuis, Sen. Brown Legislative Director (jerry_hekhuis@brown.senate.gov)

Re: Pension Risk Transfers: Proposed Legislation

Dear Senator Brown:

I am the Executive Director of Retirees for Justice, a retiree advocacy group that is committed to preserving and restoring earned benefits for retirees and their families. I also represent the Association of Belltel Retirees, the Association of DuPont Retirees and GE Retiree Benefit Solutions (“GERBS”), among others, as an attorney and retiree advocate.

By way of background, the Association of Belltel Retirees is a group of former Ma-Bell companies (now Verizon) that had their pensions literally transferred out from under them. For decades, Verizon assured its retirees that the pension benefits they and their families were counting on would be secure. With this promise of “guaranteed lifetime benefits” in mind, many employees made the decision to take retirement at a young age. But in 2012, Verizon did what many more companies are doing today; Verizon transferred over \$8.4 billion in pension liabilities to Prudential in a de-risking transaction that impacted over 41,000 retirees across the nation. The Association of DuPont Retirees and GERBS are both facing similar situations – I would be happy to provide you with these details at an appropriate time and place.

Proposed Retirement Restoration Act of 2022

I write to thank and congratulate you on your comments made in U.S. Senate Committee on Banking, Housing, and Urban Affairs (“Committee”) hearing on Current Issues in Insurance held on September 8, 2022. I am delighted that the issue of Pension Risk Transfer (PRT) is receiving your attention. Thank you for leading the Committee in considering these important issues, to ensure that ERISA continues to provide pensioners with the protection that was intended when it was passed.

However, as you highlighted during the hearing, more needs to be done to protect retirees from the high risks created by PRT deals. The Stop Wall Street Looting Act introduced by Senator Elizabeth Warren, and the Rise & Shine Act introduced by Senator Patty Murray are great steps

forward, but I fear that they do not go far enough to protect retirees and their families. Would you be willing to sponsor a more comprehensive amendment to ERISA to protect retirees and their families? A copy of a bill I drafted is attached hereto, tentatively titled “The Retirement Restoration Act of 2022”. (See [Exhibit 1](#)).

Is Guaranty Association Coverage Equivalent to PBGC Coverage?

At one point during the questioning of Federal Insurance Office director Steven Seitz, he was asked whether or not retirees are worse off after a PRT deal has taken place. Director Seitz did not respond directly, but the truth is that retirees most certainly are worse off after a PRT deal. These retirees will lose all of the uniform benefits intended by Congress under ERISA, including the back-stop coverage provided by the PBGC.

To illustrate this point, I have attached some sample charts that we have prepared to show just how inferior Guaranty Association coverage is to PBGC coverage – especially as the retiree grows older. (See [Exhibit 2](#)). These charts consider the plight of an imaginary worker who retires at 65 and whose defined benefit plan gets taken over by the PBGC or whose annuity provider has entered into insolvency proceedings under a state’s insurance law at exactly the same time. The charts show the progression of his payments (by the Guaranty Association) for a monthly pension benefit of \$2500, \$5000 and \$7500 per month, as well as the maximum PBGC coverage for a straight life annuity for 2022. Each chart represents a different state – one with coverage capped at \$250,000, one at \$300,000, and one using \$500,000 in Guaranty Association coverage maximums.

Guaranty Association coverage is per individual per lifetime, and it is capped in accordance with State law. Moreover, most Guaranty Associations limit the amounts they can assess their members (life insurers writing premiums in their state) generally based on a small percentage of their annual written premium. The ability of the Guaranty Association safety net to withstand an insolvency of an insurance company the size of Athene, Prudential, or MetLife is entirely uncertain. Also, many pensioners do not realize that their state of residence at the time an insurer becomes insolvent or impaired dictates how much “coverage” they will receive from their Guaranty Association (total coverage ranges from \$250,000 to \$500,000). As the attached charts show, pensioners who live more than a few years are invariably worse off if they have to depend upon the Guaranty Association safety net. Frankly, Guaranty Association coverage simply makes no sense for payout annuities.

Transparency, Accountability and Uniform Laws Are Needed Before It Is Too Late

By my calculation, PRT deals since 2012 are approaching \$250 billion in pension liabilities transferred to insurance companies. IBM most recently off-loaded \$16 billion to MetLife and Prudential impacting 100,000 retirees, and Lockheed Martin recently completed another PRT deal involving Athene and an additional \$4.3 Billion impacting approximately 13,600 retirees and beneficiaries. I believe that the most recent Lockheed transaction is the 4th PRT deal with Athene and the second this year alone. There is no doubt that the volume of PRT transactions is on the rise.

While I recognize that PRT is here to stay, it is critically important that transactions impacting the Greatest Generation and their families are fully transparent. The current state of oversight is just a way of “kicking the can down the road.” We must legislate to ensure that PRT transactions are regulated equitably and similarly across the country – my proposed amendments to ERISA are the way to do this. I thank you for your attention to these important and complicated issues.

Now is the time to listen to the voices of retirees – the parties with the most to lose in PRT deals. Should it prove useful, I would be delighted to meet with you to discuss this matter further, share the research that I have compiled over the years and highlight other work we have done to protect pensioners, as well as provide you with some of my clients’ experiences with PRT transactions, and the fears that they have about their retirement security.

I thank you, again, for your interest in this matter. I am available to provide any support that you might need to address these critically important issues for retirees and their families.

Sincerely,



Edward S. Stone

Email: estone@retireesforjustice.org

cc: Lisa Salmons, Retirees for Justice (rfjadmin@retireesforjustice.org)

Exhibit 1

___ 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.

IN THE HOUSE OF REPRESENTATIVES

Date: _____

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.

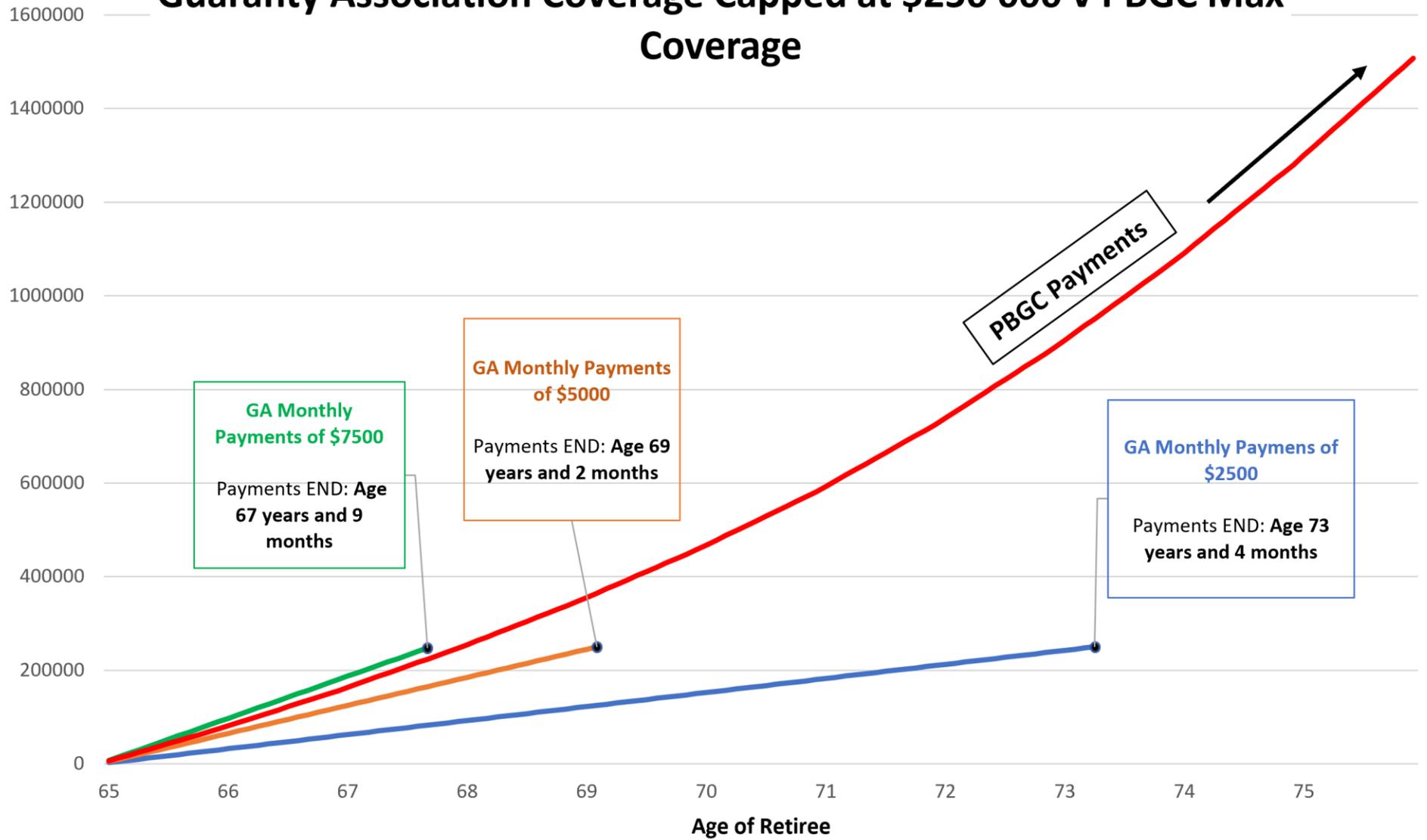
“Sec. 804. Regulations”.

“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.

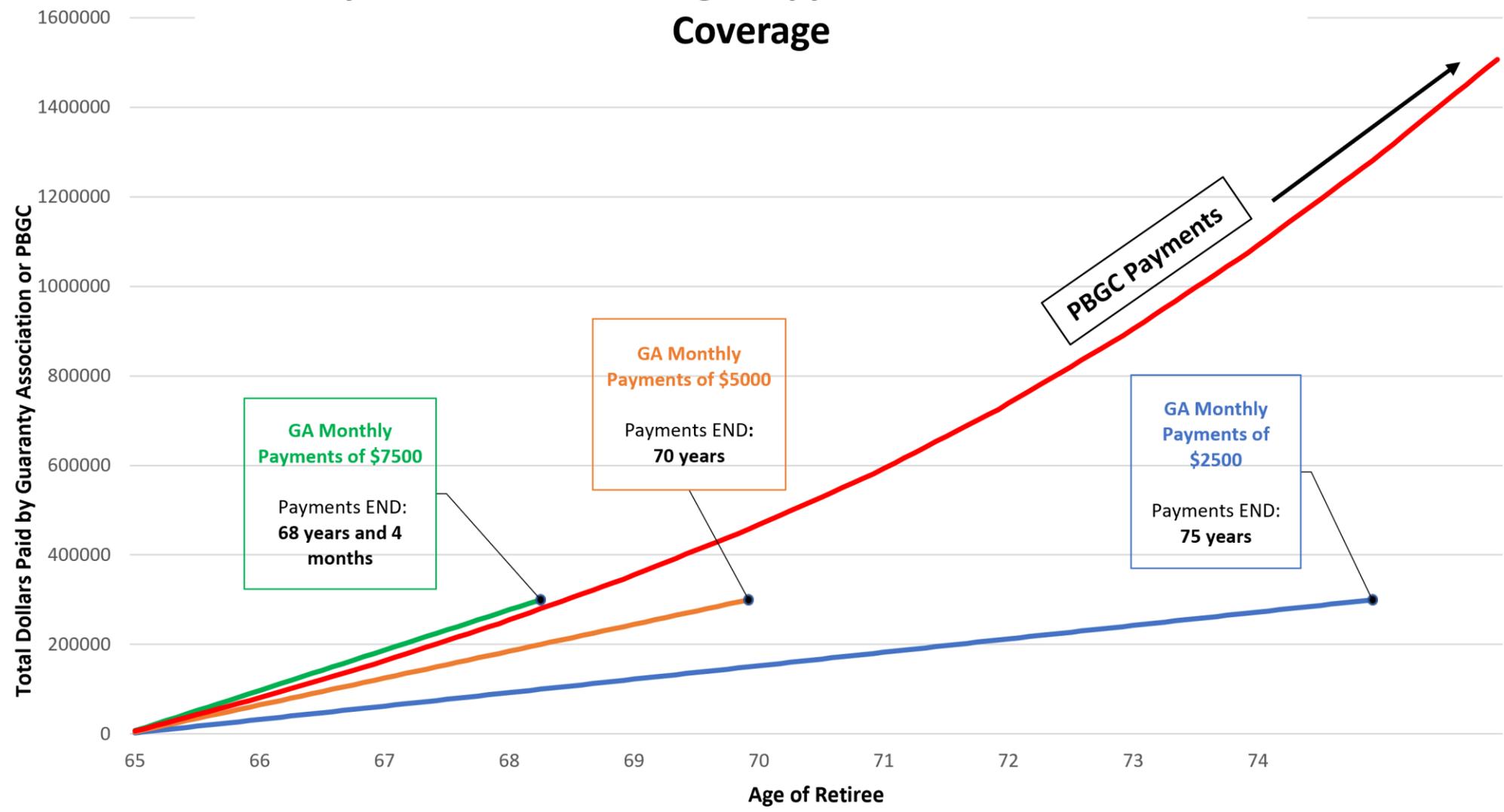
Guaranty Association Coverage Capped at \$250 000 v PBGC Max Coverage

Total Dollars Paid by Guaranty Association or PBGC



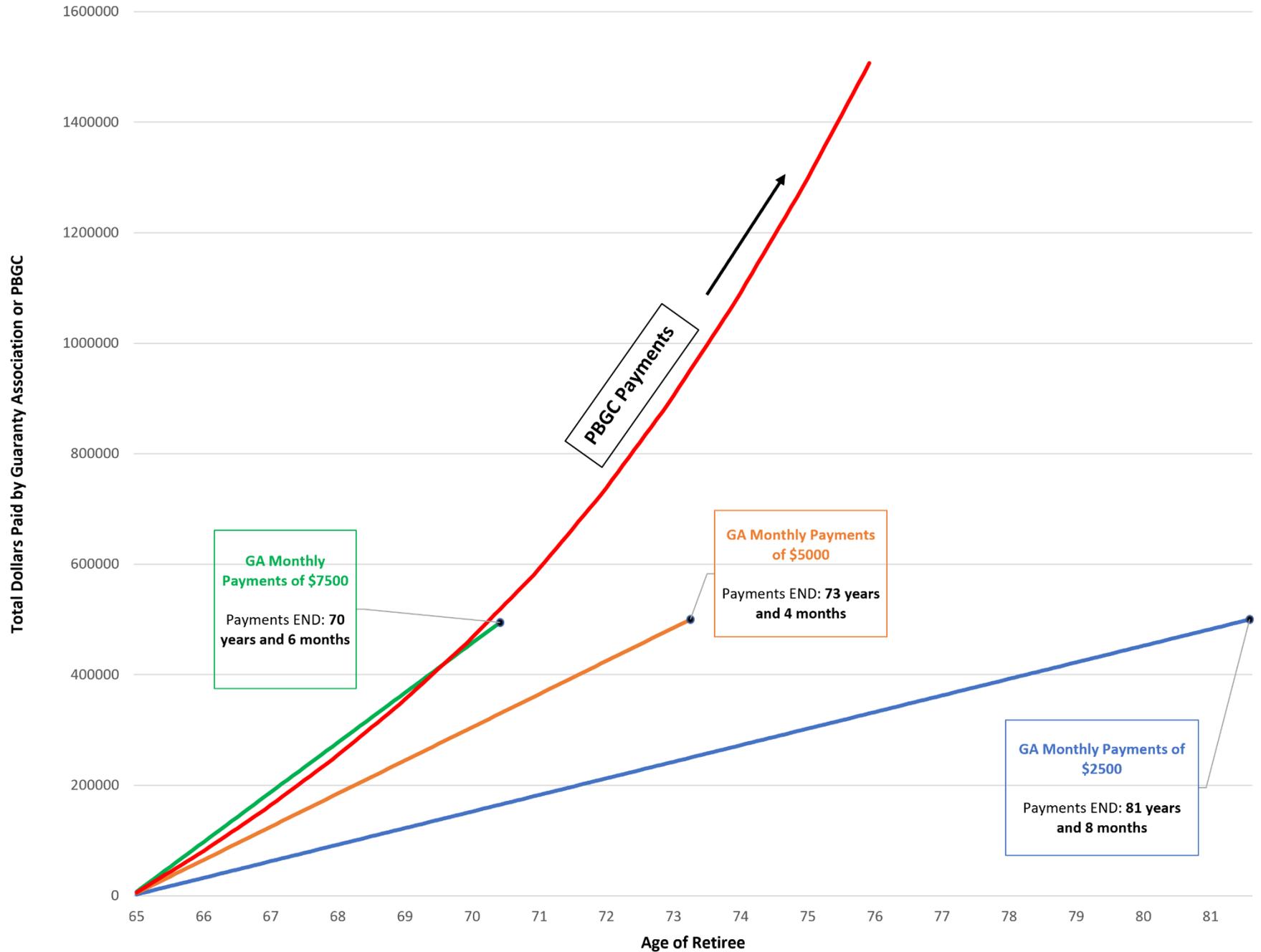
PBGC Values Source: <https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee>

Guaranty Association Coverage Capped at \$300 000 v PBGC Max Coverage



PBGC Values Source: <https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee>

Guaranty Association Coverage Capped at \$500 000 v PBGC Max Coverage



PBGC Values Source: <https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee>