EMPLOYER-SPONSORED BENEFITS

Many Factors Affect the Treatment of Pension and Health Benefits in Chapter 11 Bankruptcy

What GAO Found

The effects of recent legislation, including BAPCPA and PPA, on employers’ decisions to modify benefits are difficult to distinguish from the effects of other factors that lead to changes in benefits both within and outside of the bankruptcy process. Most bankruptcy professionals agreed that while BAPCPA included some changes that will affect the treatment of employer-sponsored benefits—such as the look-back period for the reinstatement of retiree health benefits—it will not substantially affect employers’ decisions to modify benefits. Some bankruptcy professionals suggested that PPA may affect employers’ decisions to maintain their defined benefit (DB) plans. Bankrupt employers consider many other factors when trying to reorganize successfully, including competing claims, their stakeholders and creditors, and outside forces such as the financial market and industry competition.

More information is known about the extent to which selected employers made benefit changes resulting in court decisions—i.e., changes to DB plans, retiree health benefits, and benefits covered by a collective bargaining agreement (CBA)—than changes not resulting in them—i.e., changes to defined contribution (DC) plans and active employee health benefits not covered by a CBA. Most of the 115 employers we reviewed did not offer benefits that specifically needed court approval to change. We found only 20 of these employers had DB plans, 18 had retiree health benefits, and 28 had employees covered by a CBA. Nine employers terminated at least one of their DB plans, and 3 have terminations pending; 5 sought to modify their retiree health benefits; and 8 sought to modify or reject CBAs. While most employers received approval to continue employee benefits in their initial motions, it is unknown how many employers that offered health benefits to active employees or DC plans continued to fund them because employers do not always need to seek court approval to change these benefits.

Factors That May Affect Employers’ Decisions Regarding Benefits

- **Law**
  - Bankruptcy Code (BAPCPA)
  - ERISA (PPA)
  - National Labor Relations Act and Railway Labor Act

- **Competing claims**
  - Wages
  - Utility payments
  - Leases
  - Other claims

- **Stakeholders**
  - Unions
  - Retiree committee
  - Pension Benefit Guaranty Corporation
  - Lenders
  - Other creditors
  - Employees

- **Outside forces**
  - Industry and trends
  - Competition–benefit costs
  - Financial markets

Source: GAO analysis.