

NRLN Presents Legislative Agenda to White House Staff

As the result of a number of NRLN letters sent to the White House, President Obama's staff charged with crafting and managing health care reform policy for the Administration invited the NRLN Washington, DC team to a one-on-one meeting. Marta Bascom, NRLN Executive Director, and Michael Calabrese, NRLN Legislative Strategist, met on Thursday, Feb. 17th, with key staff members to reiterate the NRLN's primary health care legislative priorities. The NRLN staff placed emphasis on the reimportation of safe, lower cost prescription drugs; the NRLN's Maintenance of Cost Payment proposal to protect retirement benefits as currently embodied in the House health care reform bill, and Medicare buy-in for retirees ages 55-64 at a cost that will not burden Medicare, plus other issues important to retirees.

The White House staff restated President Obama's commitment to comprehensive health care reform and reviving the conference on the bills that have been passed by the House and Senate. The NRLN urged the White House to support the NRLN's efforts on Capitol Hill to get these proposals passed independently should they not pass in a comprehensive national health care bill. Many of the issues of great importance to retirees are not included in the final, pared-down bills on the Hill and need to be addressed immediately.

The fact that the White House invited the NRLN's staff to a meeting demonstrates that our messages are gaining the attention of government leaders. The emails and phone calls to Washington, DC from our Grassroots Network members are an important part of making the voices of retirees heard. Together, our efforts will make a positive contribution to retirement security.

Finally, I want to share with you below the text of a letter that I sent to Senator Harry Reid, Majority Leader, with a copy to House Speaker Nancy Pelosi, on the subject of pension asset protection. A similar personalized letter was sent to six other leaders in the Senate. We are closely tracking the pension funding relief issue in Congress and may need to call on our Grassroots Network members to send letters and make phone calls to their elected representatives.

Bill Kadereit
President, National Retiree Legislative Network

February 14, 2010

The Honorable Harry Reid, Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510-2803

Dear Senator Reid:

It is understandable that a number of Senators would be sympathetic to the appeals from numerous companies for temporary relief from pension plan funding requirements due to the steep market slide in 2008. The National Retiree Legislative Network (NRLN), which represents the interests of more than 2 million retirees who have retired from 114 companies and public entities, recognizes the plight of these companies. We would not want to force contributions to pension plans that would cause irreparable harm to the companies, trigger layoffs or result in companies declaring bankruptcy.

However, pension plan assets currently held in trust should not be allowed to be used by these same companies to pay for operating expenses. ERISA should be amended to stop companies from using pension assets to make severance payments during a corporate restructuring. These "back door reversions" represent a widespread practice by companies to circumvent the Congressional policy against reverting pension assets for corporate purposes. It simply doesn't make sense for Congress to authorize a funding hiatus without simultaneously closing this back door.

To better protect the pensions of retirees and future retirees, I urge you to include in the Senate's pension funding relief bill language similar to the provisions that are in Section 111 (pages 65 and 66) of H.R. 3936, the Preserve Benefits and Jobs Act of 2009, sponsored by Representatives Earl Pomeroy and Pat Tiberi.

The language in Section 111 relating to a company's ability to amend its pension plan, in part, states: *"No ad hoc amendment to a defined benefit plan which is a single employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate of which benefits become nonforfeitable may take effect during the plan year if the adjusted funding target attainment percentage for such plan year is- "(I) less than 120 percent, or "(II) would be less than 120 percent taking into account such amendment."*

An increasing number of companies have tapped pension assets to pay for lump sum payments equal to six (6) months or even twelve (12) months pay to employees who agree to retire within a specific time window. In 2001 and 2002, a struggling Lucent Technologies charged \$2.2 billion in lump sum "termination benefits" to its various employee pension plans. More recently, GM used \$2.9 billion in pension assets to make lump sum severance payments during 2008 - and ended the year with a \$12.4 billion pension deficit (\$20 billion by PBGC calculations). AT&T, Bethlehem Steel, Chrysler, Consolidated Freightways, Delphi, Delta Air Lines, Federal Express, Polaroid, Qwest, United Airlines, Verizon and many other corporate plan sponsors have raided pension assets with impunity and used those assets to cover their business restructuring expenses.

These back door reversions are not offset by corresponding reductions to pension liabilities and are gone forever. This practice places pension plans at risk to be terminated. It is past time to end this pilfering of defined plan pension assets. These actions threaten the security of pension plans and the potential is great that the Pension Benefits Guaranty Corp. (PBGC) might have to take over the plan in the future. Furthermore, depleted assets reduce the likelihood the plan will ever generate surplus assets that can be used to offset corporate health care costs for retirees or be available for pension Cost of Living Adjustments (COLAs), a benefit that non-government retirees seldom receive.

The NRLN has researched and written a whitepaper on how companies are misusing pension plan assets and provides our proposed amendments to the Pension Protection Act of 2006 to prevent the abuses. I have attached the Executive Summary from the whitepaper. If you would like to receive a copy of the entire whitepaper, please contact Marta Bascom, the NRLN's Executive Director, on (703) 863-9611 or by email at marta.bascom@linkspace.net.

The Senate has an opportunity for a quid pro quo-companies receive temporary funding relief and retirees gain the protection of their pension assets from being used for non-pension expenses. Please don't miss this opportunity to provide for the financial security of America's retirees. NRLN members who are Nevada residents have retired from AT&T, Alcatel-Lucent, Chrysler, Delta Air Lines, General Motors, Qwest and NRLN individual members retired from many other companies will appreciate your support on this matter.

Sincerely,
Signed
Bill Kadereit
President, National Retiree Legislative Network

Attachment

Copy to: Representative Nancy Pelosi, Speaker
U.S. House of Representatives

NRLN

National Retiree
Legislative Network

Back Door Reversions:
**Draining Pension Assets for Severance and Other
Corporate Purposes Threatens Retirement Security**
Executive Summary

The use of pension assets to make severance payments during a corporate restructuring is the largest and most widespread "back door reversion" by which some companies are seeking to circumvent the Congressional policy against reverting pension assets for corporate purposes. When pension funds were used to finance hostile takeovers and the mass layoffs that typically followed, in 1990 Congress stopped the practice by imposing a 50 percent excise tax on pension reversions. But today's "back door reversions" are more insidious. Although ERISA explicitly prohibits the use of qualified pension assets for "layoff benefits," companies can amend a plan at any time not merely to offer older workers enhanced early retirement benefits (by awarding extra years of service credit), but even to offer lump sum severance payments equal to a year's salary or more as part of a corporate restructuring.

The 2006 Pension Protection Act tightened up on this practice somewhat by requiring plan sponsors to pre-fund a plan amendment that increases benefit liabilities to the extent the plan's funding level would fall below 80 percent (after taking account of the new benefit liability). However, as the 2008 stock market meltdown demonstrated, a plan that is only 80 percent funded during a bull market could easily end up below 60 percent funded in a bear market - and in default with the PBGC if the plan sponsor declares bankruptcy. Moreover, any significant reduction below full funding not only leaves all plan participants insecure, it also reduces the ability of the plan to build a surplus that could be used to grant cost-of-living adjustments to longtime retirees, whose fixed monthly benefits erode with inflation, or to offset the cost of retiree health benefits through a Section 420 transfer.

The trend toward distressed companies using employee pension assets to pay severance costs - instead of relying on a restructuring reserve or other corporate assets - is not new to the current financial crisis. Lucent, United Airlines, AT&T, Verizon, Qwest, Federal Express, Delta and Delphi are among the other companies that have tapped pension assets to pay corporate restructuring costs. Some of these companies drained pension assets for severance payments as they spiraled downhill toward bankruptcy and an eventual taxpayer bailout courtesy of the PBGC. Other companies, left under-funded, cut other retiree benefits across the board. And some others, although their plans remained solvent, used up "surplus" assets that could have benefitted the vast majority of plan participants if used instead for cost-of-living adjustments or offset the cost of retiree health care benefits. In the current crisis, General Motors used pension assets to pay for billions in severance payments during 2008 - and ended up with such a dangerous degree of under-funding that in early 2009 the Treasury Department restricted the practice as a condition of the federal bailout loan package.

The most effective way for Congress to protect plan participants (and taxpayers) from unfunded liabilities from severance, layoff or any other benefit increase is simply to increase the target funding level threshold required for unfunded benefit increases and lump sum payouts from the 80 percent level, currently required under the PPA, to 120 percent. Severance or other benefit increases to selected individuals that are not funded should be paid out

of the company's operating expenses, not from the pension trust. This would not limit the ability of plan sponsors to enhance benefits. What it does do is require companies to currently fund lump sum payouts or other benefit increases that would otherwise cause the plan to become under-funded or worsen its level of under-funding. Amendments increasing benefits that are collectively bargained or negotiated between a plan sponsor and bona fide union representatives, or in the context of a jointly-trusted Taft-Hartley plan, should be exempted from this more restrictive funding level.