

To: NRLN Grassroots Network Members
From: NRLN President Bill Kadereit
Subject: NRLN Addresses Retirees' Concerns with Federal Agencies

The NRLN has injected a voice for retirees into the rulemaking process of the Employee Benefits Security Administration (EBSA) division of the Department of Labor (DOL) and the Department of Health and Human Services (HHS).

On March 2nd, Marta Bascom, NRLN Executive Director, testified before a panel of EBSA/DOL officials. The two-day hearing was held to get input from pension plan financial institutions and other interested parties on the proposed modifications to the regulation defining the term "fiduciary" under a section of the Employment Retirement Income Security Act of 1974 (ERISA). The NRLN testified on the need to better protect Americans' pension plans by requiring that pension plan fiduciaries for foreign-owned companies and subsidiaries in the USA be subject to the jurisdiction of U.S. courts. Limiting the ability of fiduciaries of U.S. corporate pension plans to avert responsibility for such things as moving corporate assets offshore that could otherwise effectively collateralize pension funds is a critical element of NRLN's Pension Asset Protection, PBGC Reform and Bankruptcy Reform legislative proposals.

Marta's testimony was a follow-up to the seven-page regulator comments developed by the NRLN's Regulatory Affairs Committee (RAC) and filed with the EBSA on February 1st. You may recall that in my February 2nd message to you, I pointed out that that it is essential that all fiduciaries of U.S. retiree pension plans be subject to the jurisdiction of the U.S. courts. Currently, corporate executives living in and protected by the laws of another country could misstep as a fiduciary and be protected from the U.S. legal processes. Go to <http://www.nrln.org/documents/NRLN%20Ltr%20Fiduciaries%20Final4%20013011.pdf> to read the filing.

I want to share with you three excerpts that go to the heart of Marta's testimony. Go to <http://www.nrln.org/documents/Fiduciary%20testimony%20final.pdf> to read the entire testimony.

"The NRLN strongly supports EBSA's efforts to update the scope of ERISA's fiduciary duty protections and, specifically, the proposed rule on the definition of the term "fiduciary." The changing marketplace has made several aspects of the current regulatory structure obsolete and ineffective. EBSA's proposed changes are necessary to provide needed protection for pension plan participants. The NRLN applauds these efforts and thanks the Assistant Secretary and her staff for moving forward on this issue but the NRLN also remains hopeful that this proposed rulemaking process will take into consideration the increasing role of foreign fiduciaries in this global marketplace.

"Specifically, the NRLN recommends that the proposed rule include a requirement that at a minimum, all named fiduciaries under ERISA be subject to the jurisdiction of U.S. district courts with respect to the enforcement of judgments for potential breaches of fiduciary duty. In addition, named fiduciaries should be held jointly liable for the fiduciary breaches of other fiduciaries who they designate under Section 405(c)(1) and who they know, or reasonably should have known, are not subject to the jurisdiction of U.S. courts for the purpose of enforcing judgments under ERISA. Increasing globalization dictates that this should be so.

"The fact is that the regulatory structure currently in place does not address the realities of the global marketplace nor the vulnerability of U.S. plan participants should there be a breach in the foreign fiduciary's duty. Unless our government examines the current regulatory structure with a proactive strategy, U.S. plan participants remain dangerously vulnerable due to the lack of legal recourse. Under these circumstances, it is an incomplete exercise to determine that an individual or firm is an ERISA fiduciary and liable for breach of fiduciary duties if that party is not required to be subject to the jurisdiction of U.S. courts."

Now, I want to turn to the subject of the comments filed on February 23rd with HHS. Marta, with support from our Regulatory Affairs Committee, seized the opportunity to be an advocate for retirees on HHS' proposed rulemaking for the annual review of unreasonable increases in health insurance premiums under the new health care reform law, the Patient Protection and Affordable Care Act ("PPACA").

HHS was limiting its scope to the review of unreasonable health insurance premium increases to the small group and the individual markets. The NRLN urged HHS to extend this protection to retirees in the company-sponsored large group retiree market. We urged HHS to address those situations where all or a substantial share of premium rate increases are being passed along to individual retirees. The following paragraph will give you a good idea about how the NRLN went to bat for retirees in its three-page letter. Go to <http://www.nrln.org/documents/HHS%20NPRM%20premium%20on%20Letterhead%20%281%29.pdf> to read the entire letter.

"Since plan sponsors have capped their share of premium payments in many plans, retirees on fixed incomes are at least as vulnerable to high and sometimes unreasonable premium increases that are passed along to them to pay out-of-pocket. Retirees in large group plans already suffer from the harsh impact of plan sponsor cost increases in the form of higher deductible and copay requirements, loss of coverage and the inclusion of annual and lifetime limits. The NRLN urges the Department to extend premium rate review to the subset of retiree-only as well as retiree and active worker combined plans that impose all or a substantial share of current year premium rate increases on plan participants. We believe that it was the intent of Congress in enacting the consumer protections in the PPACA that insurance plans across all market segments should be protected, including large group retiree plans, and that the Department should respond accordingly. Nowhere in the statute does it say that individual retirees subject to premium rate shock should be excluded from the protection of rate review."

The NRLN Board's decision to create the Regulatory Affairs Committee to monitor rules proposed by federal agencies and to be proactive in filing comments and testifying in support of retirees is proving to be an effective supplement to our lobbying on Capitol Hill and your Grassroots emails, phone calls and meetings with your members of Congress. Thanks RAC Chairman Stan Hurst, committee members Ray Sternot, Ray Sturdy, Herb Zydney, Executive Director Marta Bascom and Strategic Advisor Michael Calabrese.

Together, we are making progress happen.

Bill Kadereit, President
National Retiree Legislative Network