



NRLN Legislative Agenda 2012

The NRLN Legislative Agenda provides specific legislative proposals which address retirees' concerns about their income security, including defined pension plans, Social Security and the availability, protection, and affordability of retiree health care insurance plans through Medicare and corporate retiree plans. The NRLN also believes that Congress must enact public policy in order to protect retirees and to lower health care costs.

Please visit www.NRLN.org to read the NRLN white papers in their entirety and learn more about America's retirees. Please contact Marta Bascom, Executive Director of the NRLN, at Marta.Bascom@linkspace.net, or at (703)863-9611 for more information about these proposals and the NRLN in your state or district.



NRLN Legislative Agenda – 2012

Table of Contents

Protection and Enhancement of Retiree Income

Pension Asset Protection Proposal	3
Pension Benefit Guaranty Corporation Reform	4
Bankruptcy Reform	5
Protection of Retirees in Mergers and Acquisitions	6
Social Security Protection.....	7

Protection and Enhancement of Retiree Health Care Benefits

Protection of Medicare Benefits.....	8
Maintenance of Cost Protections (“MCP”)	9
Medicare Buy-In for Ages 55–64	10
Inclusion of Catastrophic Coverage in Medicare	10
Legislation Necessary to Reduce the Cost of Prescription Drugs and Other Cost Reductions.....	10

Retiree Income and Health Care Benefit Tax Reform

Taxes Affecting Retiree Income Sources	11
Taxes Affecting Retiree Health Care Benefits	12

PROTECTION AND ENHANCEMENT OF RETIREE INCOME

Pension Asset Protection (PAP) Proposal (See White Paper at www.NRLN.org)

The NRLN urges Congress pass legislation that would limit the ability of a company to tap pension assets to pay for what properly should be considered restructuring expense. Such new legislation, likely an amendment to ERISA, would stop company use of pension assets to pay lump-sum severance or layoff payments and/or other enhancements to selected defined pension plan participants.

Plans bargained for by unions and subject to terms of a collective agreement would be exempt from this legislation.

Such lump sum severance or layoff payments are typically granted to 10% or fewer of the total plan participants and dilute defined benefit pension plan assets. These often take the form of incentives designed to get workers to retire early, in exchange for a waiver of rights by older workers which limits the company's age discrimination liability. Use of pension plan assets in this fashion benefits shareholders, not plan participants, and should not be paid out of pension trusts.

It is pivotal to note that non-union plan participants have no bargaining power to counter perilous corporate actions affecting pension plans and should be entitled to this proposed ERISA protection. This practice has led to under-funding of defined benefit pension plans and thus directly increases the risk of under-funding and triggering PBGC takeover where plan liabilities have outgrown assets and/or where decline in equity markets have caused a loss in value of plan assets.

The IRS and Federal courts have allowed companies to hide behind current pension law to use defined benefit pension plan assets to pay such lump sum bonuses and, to date, Congress has allowed this practice to continue. This sacred-cow type of thinking is not in keeping with the intent of ERISA, the 2006 Pension Protection Act or the vested rights of defined benefit pension plan participants.

Additional amendments to the Pension Reform Act of 2006 must (a) Protect defined pension fund assets from being bought out by management firms, hedge funds, or other high risk third parties; (b) Must protect the integrity of Defined Pension funds against schemes designed to enhance corporate profits.

Congress must codify IRS rules that state that defined pension plans must not discriminate in favor of highly compensated employees. If a company wishes to provide enhanced supplemental deferred compensation (QSERPs), it must do so without any tax advantages gained through defined pension plans.

The use of plan assets as indicated above effectively constitutes reversions that place pension assets at risk and deny participants the opportunity to benefit from IRS Sec. 420 transfers to pay for health care, and precludes COLA consideration.

Pension Benefit Guarantee Corporation (PBGC) Reform (See White Paper at www.NRLN.org)

The PBGC currently treats changes in the annual earnings limits, mandated by Congress, as modifications to the pension plans themselves, and has applied the lowest annual earnings limit during the five-year look-back period when calculating retiree benefits. These changes result from applying IRS code changes under Sections 401(a) and 415(b).

Current PBGC practices permit the disqualification of certain retiree vested pension benefits if granted within a five-year window prior to pension plan termination. The result has been loss of retiree vested benefits that should be protected by ERISA.

Proposed PBGC Rules and Regulation Changes

- The PBGC should use the defined benefit plan income and pension benefit limitations defined in IRS codes 401(a) and 415(b) in effect on the date of the plan termination when calculating the pension benefits payable under Priority Category Three (PC3).
- PBGC rules should be modified to require the PBGC to include the retiree's age and length of service, used to determine his/her benefit at retirement or termination, whichever is higher, when calculating and determining the PBGC pension benefit.
- PBGC rules used to calculate or otherwise determine PBGC pension benefits (4010 filings) should include those used to determine the termination values of plans and those accounting assumptions between ERISA fund reporting and the PBGC plan-termination-funding calculations as well as full disclosure of 4010 filings and calculations. Calculation of termination value by the PBGC should use the same discount rate called for under ERISA and used by the company to calculate the pension obligation of the terminated plan.
- Amend the PBGC reporting structure so it is accountable to one federal agency as opposed to the current three.
- Raise retiree claims to 'Administrative Status' in bankruptcy filings.

PBGC and Pension Plan Asset Protection During Plan Terminations (See also p. 6 discussion on Mergers and Acquisitions)

The NRLN advocates for legislation that clarifies a parent foreign owner's pension plan obligations to plan participants and that the foreign owner must abide by ERISA rules should a U.S. subsidiary be spun off or dissolved. All U.S. based assets under control of a foreign owner must remain within the legal jurisdiction of U.S. courts in order to satisfy ERISA funding obligations. Pension plan fiduciaries would be required to be American citizens. Clarifications must address situations where foreign corporations that own U.S. subsidiaries are also acquired by a third party, foreign-owned corporation.

Bankruptcy Reform (See White Paper at www.NRLN.org)

Current bankruptcy laws do not offer clear rules that assure equal treatment to retirees that lose their pension and health care benefits that are afforded to otherwise secured creditors. Bankruptcy courts have stymied retirees from making claims under Section 1114 rules by ruling in favor of companies because they can establish the existence of a Reservation of Rights (ROR) clause which are often not easily discernable to laypeople.

Proposed Changes to Status of Retirees in Bankruptcy Law:

- Disallow company Reservation of Rights (ROR) clauses as reason for denying retiree's rights to the establishment of a Section 1114 Committee.
- Require that companies provide retirees with an updated list of all retirees and that such a list must be updated in a timely way throughout bankruptcy proceedings.
- Mandate Section 1114 Committee within 60 days of a Chapter 11 filing date.
- Permanently increase the Health Coverage Tax Credit (HCTC) payment from 65% to 80% (post stimulus).
- Raise retiree claims to "Administrative Status" those assets in bankruptcy filings.
- The NRLN supports legislation that would prohibit unions from negotiating or approving the reduction or termination of collectively-bargained benefits of retirees including the plans that govern those benefits in bankruptcy proceedings.

- Require pension plan sponsors to fund underfunded plans after passage of 386 days from date of filing for bankruptcy.
- A retiree who has suffered the loss of non-taxable health care benefits should not be subjected to taxation (as well as Social Security and Medicare taxation) on the settlement received in corporate bankruptcy court for the loss of health care benefits. The NRLN supports legislation that would designate as non-taxable income any bankruptcy claims and settlement for reduced or eliminated retiree-earned health care or other welfare benefits.

Protection of Retirees in Mergers and Acquisitions (See White Paper at www.NRLN.org)

The advent of globalization and attendant behavior of U.S. firms in forming joint ventures and engaging in mergers, acquisitions and spin-offs involving foreign and U.S.-owned corporations has added complexity to the determination of how U.S. retirees' pension and welfare benefits are protected from being reduced or eliminated as a result of change in ownership.

Mergers and acquisitions activity can ultimately result in dissolution of a corporation, loss of jobs and loss of retiree pension and welfare benefits. Consequently, the involvement of Bankruptcy Courts and the PBGC are always possible outcomes of M&A effort gone badly. Thus, pension plan asset protection issues mentioned in the NRLN's PBGC and Bankruptcy Reform in other sections of this agenda may be the direct result of M&A activity.

In some cases it is clear that the ERISA provisions apply. Alternatively, it is also unclear what the rights of retirees, the PBGC and bankruptcy courts are in some situations. The NRLN has prepared a white paper describing the foundation for determining which U.S. statutes must be modified or created to better protect retirees. The paper includes proposed legislative solutions and/or regulatory rule changes that are required to protect U.S. plan participants.

The NRLN recommends five changes for legislation, regulatory reform and stepped-up enforcement:

1. Congress needs to clarify that the PBGC has the authority to enforce a lien against all U.S.-based assets of the parent company of a foreign-owned plan sponsor even if those other assets or subsidiaries are not considered part of the controlled group sponsoring the plan.

2. The Department of Labor should revise its regulations related to breaches of fiduciary duty to **clarify that fiduciaries under ERISA – at a minimum contributing sponsors and named fiduciaries – must be subject to the jurisdiction of federal district courts with respect to the enforcement of judgments for potential breaches of fiduciary duty.**
3. **Congress should give regulators broader and more flexible authority under § 4042(a) to negotiate or seek court approval for a more tailored remedy, short of plan termination,** to address spin-offs, mergers, or other transactions that greatly increases the risk of future loss to the PBGC and participants.
4. **Congress should expand the events that trigger immediate liability for pension under-funding pursuant to Section 4062(e), calculated on a termination basis, to include transactions that pose even greater risk to all plan participants.** Triggers should include spin-offs, control group break-ups and takeovers by foreign firms that transfer more than 20% of a firm’s under-funded plan liabilities, or which transfer more than 20% of the plan sponsor’s assets or revenues without obligation for funding plan liabilities.
5. **The PBGC should add foreign ownership, and proposed sales or spin-offs to foreign owners, along with such transactions among U.S. corporations, to the list of transactions triggering special scrutiny under the PBGC’s Early Warning Program and, if possible, to the list of transactions requiring an Advance Notice of Reportable Events.**

Social Security Protection (See White Paper at www.NRLN.org)

The NRLN advocates legislation that will make Social Security financially sound without reducing current and future retiree benefits. The view of the NRLN is that the Social Security system is not broken. Threats to the system can be averted without dismantling the program. Current and future retirees have paid taxes to fund this benefit and the annual inflation adjustment. Congress must deal with this as a short-term problem through the period during which baby boomers enter and exit the liability pool.

The NRLN opposes changes to the Consumer Price Index, such as the Chained CPI, that would result in reducing benefits to seniors.

Annual increases in Social Security benefits should equal or exceed any congressional pay raises for that year.

PROTECTION AND ENHANCEMENT OF RETIREE HEALTH CARE

Protection of Medicare Benefits (See White Paper at www.NRLN.org)

The NRLN advocates that Congress must guard against reductions in Medicare expenditures that negatively impact the care that retirees receive from doctors, hospitals and other health care service providers.

- Eliminate waste, cut back federal budgets for projects, non-strategic grants and planned budget expenditures and stop authoring wasteful preferential bills and amendments.
- Attack Medicare fraud with the full force and effect of the government. Congress must enact laws that contain stiffer federal penalties for defrauding the Medicare system.
- Pass legislation that would compel safe importation of prescription drugs, competitive bidding, funding to accelerate generic drug sales and eliminate non-competitive practices in the prescription drug industry.
- Set fair and equitable rate formulae for determining physician fees and make adjustments up or down annually. Examine costly referrals and redundant visit practices and disallow them.
- Finally, Congress must honor its covenant with the American people. The effect of unemployment on payroll tax revenue, the surge in baby-boomer eligibility and rising health care costs cannot be offset by slashing Medicare benefits without regard for this covenant. Congress must increase the Medicare tax on workers and employers until such time as taxes can again fund 60-65% of the Medicare budget.

The NRLN advocates that adequate compensation be provided to medical providers to assure availability of Medicare accepting physicians. Any revised formula should assure that physicians are obligated to reduce the cost of health care.

Medicare-eligible retirees on fixed incomes elected to purchase Medicare Advantage plans because of lower premium costs and/or enhanced benefits created by subsidies authorized by Congress in the 2003 Medicare Modernization Act. The Centers for Medicare and Medicaid Services rules do not protect guaranteed issue rights of those affected where they have exceeded a twelve-month coverage time limitation period. As a result, Medigap insurers may not allow retirees to buy into Medigap plans due to pre-

existing medical conditions, many of which may have developed while covered by a Medicare Advantage plan, nor can retirees freely switch to plans annually.

The NRLN supports legislation that will require providers to allow Medicare Advantage Plan participants to buy into Medigap coverage regardless of pre-existing conditions or lapses in time frame parameters and to also allow retirees with Medicare Advantage plans to switch plans annually without prejudice.

Maintenance of Cost Protections (“MCP”) *(See White Paper at www.NRLN.org)*

In the event that a corporation cancels or reduces all or part of a retiree’s health care benefits, including those that are ancillary such as life insurance, prescription drugs, long term care and other benefits, the employer would be required to pay to the retiree the amount the corporation had been paying on behalf of the retiree and eligible dependents, adjusted for retiree participation in Medicare, at the time of a partial or full cancellation. Companies would be entitled to tax credits as an offset against dollars paid. Retirees could use such funds to purchase supplemental insurance from employers or third-party providers but employers would be required to continue to make available and pay administrative costs for self-insured or contracted group plans.

Provisions in statutes such as in Sec. 720 of ERISA which permit the denial of protections otherwise enacted by Congress must be stricken from such statutes. Denying enacted benefit coverage to retirees, simply because retirees are members of retiree-only plans, where such protections are otherwise afforded to younger active employees or retirees is discriminatory, unjust and patently bad policy.

The NRLN advocates that Congress enact legislation in order to rectify the carve-outs of benefits currently excluded from retiree-only group plans resulting from the Patient Protection and Affordable Care Act of 2010. These include but are not limited to: 1) Prohibition of pre-existing conditions exclusion or other discrimination based on health status; 2) Prohibition on excessive waiting periods; 3) No lifetime or annual limits; 4) Prohibition on rescissions (cannot drop coverage for high claims or health conditions); 5) Extension of dependent coverage until age 26; 6) Development and utilization of uniform explanation of coverage documents and standardized definitions; 7) Bringing down cost of health care coverage (for insured coverage).

Medicare Buy-In For Retirees Ages 55 – 65 *(See Position Paper at www.NRLN.org)*

Retirees between the ages 55 and 64 should be permitted to buy into Medicare at an age-adjusted premium. This option would be available to early retirees on an at-cost basis that would not burden the Medicare system. Access would be limited to individuals without access to an employer-sponsored or other group health plan actuarially equivalent or superior to Medicare.

Inclusion of Catastrophic Coverage in Medicare *(See Position Paper at www.NRLN.org)*

There are a rapidly increasing number of bankruptcies among retirees who have either been uninsured or underinsured against health care cost liabilities. Many retirees suffer because catastrophic illnesses that are covered by out-of-pocket maximum limits written into employee and retiree company-sponsored plans are not covered when the retiree becomes Medicare-eligible. Currently, Medicare does not provide out-of-pocket maximum coverage. The NRLN advocates that Congress should extend protection against catastrophic medical costs to the Medicare population by setting a reasonable maximum limit on out-of-pocket costs.

Legislation Necessary to Reduce the Cost of Prescription Drugs and Other Cost Reductions for Retirees *(See Position Paper at www.NRLN.org)*

- **Importation/Re-importation** - Importation involves foreign-manufactured prescription drugs imported into the U.S. Most U.S. companies manufacture off-shore and are de facto importers. Re-importation involves U.S. manufactured drugs sold at discounted prices in other countries and then resold in the U.S. NRLN supports legislation to amend the Federal Food, Drug, and Cosmetic Act and Homeland Security regulations with respect to the safe importation of prescription drugs.
- **Competitive Bidding** - NRLN supports legislation to allow competitive bidding for prescription drugs under any federally-supported health programs.
- **Generic Drugs** - Brand-name drug manufacturers pay user fees to the FDA that help fund adequate staffing to approve Brand name prescription drugs. Generic drug manufacturers are not offered, or required to pay the fee to expedite generic drug approval. The NRLN supports legislation to provide equal funding and staffing of the FDA to both brand name and generic drug manufacturers.

- **Generic Drug Restraint Of Trade** - Patent settlements between brand name manufacturers and generic drug manufacturers – often called “pay-for-delay”, “reverse payments” or “exclusion payment settlements” – keep generic drugs off of the market in violation of anti-trust laws. The NRLN supports legislation to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market.
- **Medicare Part D “Donut Hole”** - The NRLN supports legislation to more rapidly eliminate the Medicare Part D prescription "donut hole".
- **Encourage Retention Of Company-Provided Health Care For Retirees** - The NRLN advocates legislation that would increase the Medicare Part D prescription plan subsidy paid to employers who offer better coverage than required for equivalent coverage in Part D, if they agree to maintain their current plans.
- **Company Benefits Bundling** - The NRLN urges legislation to prohibit companies from forcing retirees to choose between company pre-determined bundles of plans or none of their sponsored Health Care or Prescription Drug Plans. This bundling practice holds retirees hostage to company plans and makes it impossible for plan participants to make free choices.

Retiree Income and Health Care Benefit Tax Reform

Taxes Affecting Retiree Income Sources

Taxing Social Security Income:

Support legislation to amend the tax code to eliminate federal and state taxes on all Social Security income and/or allow a tax credit for taxes withheld. These taxes on Social Security income constitute a reduction of benefits which were supposed to be temporary when passed in 1993 to balance the budget. Reductions on Social Security taxes should have priority over any other tax cuts including the extensions enacted in 2003. In doing so, we stop penalizing fixed-income seniors.

Alternate Minimum Tax:

Support legislation to raise the threshold level and indexing to inflation.

(401)k / IRA Mandatory Distribution Requirement From 70 ½ to age 75:

Support legislation that will allow individual choice to defer Required Mandatory Distribution (RMD) from retirement savings accounts in years when equity markets decline.

Taxes Affecting Retiree Health Care Benefits

Taxing Health Care Benefits

The NRLN advocates that the portion of premiums paid by employers that is currently treated as a tax-free benefit to employees and retirees should remain tax free.

Deductibility of Health Care Costs

Support new legislation that enables health care premiums (including Medicare premiums) to be tax-deductible, similar to the way health insurance premiums for self-employed individuals are deductible. Such deductions would be exempt from the 7.5% (AGI) limitation.

Health Savings Accounts (HSAs)

Change IRS Code of 1986 to allow HSA funding directly from IRAs for all years not one year without tax penalties and limits on annual contributions.

Withdrawals To Pay Retiree Health Premiums

Support new legislation that enables penalty- free withdrawals from 401k, IRA, SEP and other qualified accounts to pay for retiree health care premiums.

Respectfully submitted on behalf of the NRLN by

The NRLN Legislative Affairs Committee, Chaired by Judy Stenberg