To: NRLN Grassroots Network

From: Bill Kadereit, NRLN President

Subject: Report – NRLN President's Testimony To U.S. House Committee

The effort to call attention to the broken promises of employer-sponsored health care coverage for retirees took a step forward Thursday, September 25, 2008 when an important U.S. House of Representatives Committee conducted a hearing on "Safeguarding Retiree Health Benefits." I was pleased to present testimony to the Committee on Education and Labor on behalf of the National Retiree Legislative Network membership.

Representative John F. Tierney (D-MA), who has long been a supporter of holding employers accountable for providing the benefits earned by retirees, served as chairman for the hearing. Committee Chairman George Miller was unavailable due to the need for his involvement in developing critical legislation to address our nation's crisis on financial institutions. Fifteen members of the Committee were present—a fitting testament to the importance the Representatives place on dealing with the health care insurance problems facing America's retirees.

Six individuals presented testimony to the Committee. In addition to my testimony, presentations were made by one other retiree organization; a retired Raytheon toolmaker who has filed a health care lawsuit against his former employer; the Director of Government Affairs of Aon Consulting who testified on behalf of the ERISA Industry Committee (ERIC); an actuary from Red Quill Consulting, an ERIC member, who is an expert on health care benefits; and a law professor from the University of Alabama at Birmingham, who is an authority on "Reservation of Rights" clauses in benefit plans.

A copy of my testimony is included below. This will be supplemented by an extensive white paper detailing the erosion and elimination of employer-sponsored health care benefits that are causing serious economic and social harm to retirees. It is customary for Congressional Committees to receive supplemental information up to five days following a hearing. The white paper will be available to read on the NRLN website at www.nrln.org after it is file with the Committee next week.

Following my testimony, I had the good fortune to receive questions from Committee members that allowed me to provide information beyond the five-minute time limit for my prepared remarks. I was asked how it is possible for companies who made promises of retirement health care benefits to break those promises. I explained that the courts have upheld "Reservation of Rights" clauses that companies have placed in their benefit plans. The courts only consider what is written in the benefit plans and not what has been verbally promised by company executives and managers.

I pointed out that many talented employees remained with their companies because of those verbal promises instead of making other career choices that may have been more beneficial to them in their retirement.

In response to another question, I took the opportunity to emphasize that the NRLN is as equally concerned about health care benefits for retirees under age 65 as it is for retirees who are age 65 and older and are Medicare eligible. The younger retirees should have the opportunity to buy into Medicare for their health care insurance. I told the Committee that legislation is needed to provide catastrophic coverage in Medicare.

In my testimony, I noted that the FASB (Financial Accounting Standards Board) 106 rule requires employers to accrue for and book health care liabilities similar to pension liabilities. This caused many companies to begin capping or canceling health care benefits. During the Q&A period, Representative Tierney asked whether capping and canceling health care benefits helped some companies book a profit. I responded that this was certainly the case with a number of major companies.

I was emphatic that the capping and canceling of health care benefits for retirees is causing a 10 to 15 percent annual loss of real income for millions of retirees. This is eroding their purchasing power and hurting America's economy.

The bottom line on my presentation was the three proposals that I made for legislative action that you can read at the end of the testimony script below. While the hearing was to gather information from varying viewpoints on retirement health care and not intended to directly result in the introduction of bills, it was a valuable opportunity to plant the seeds for possible future action. Our proposals are supplemental to the H.R. 1322 concept of protecting retiree health care as of the date of retirement, and are intended to stimulate a position that will lead to passage of a bill that will stem the ongoing erosion of benefits quickly.   We will pursue business groups as well as the Senate in an attempt to gain even more traction for our recommendations.

A webcast of the entire hearing can be viewed on the Committee's website. Go to: http://edwork.edgeboss.net/wmedia/edwork/fc/fc092508.wvx . I was the second person to provide testimony. I hope you will watch the entire hearing. However, I you want to "fast forward" through parts of the hearing, click on the small button that moves under the screen as the hearing progresses and drag it forward.

In closing, I want to commend the efforts of the NRLN's Washington, DC team in gaining the invitation to testify. A big THANK YOU goes to Marta Bascom, NRLN Executive Director, for developing the Congressional staff contacts that resulted in the NRLN being placed on the hearing agenda. Marta and the NRLN's Legal Counselors, Michael Calabrese and Phyllis Borzi, and, as usual, a stellar effort from Ed Beltram, our VP Communications, provided value support. This team spent hundreds of hours first in preparation of a rough 25-page draft of our white paper, then in extracting the right information that would tell our story in five minutes. They also offered coaching on the hearing process based on their vast experience with Congressional Committees.

I sincerely believe that the letters you have been sending to your elected representatives have increased the visibility of the NRLN "brand" and helped us be among the few that were chosen to testify. THANK YOU!

Next, our Washington team will be working on getting a Senate Committee to conduct a hearing on "Safeguarding Retiree Health Benefits." Keep sending your Capwiz emails to Washington and we can make a difference for protecting retirement security.

Bill Kadereit
President, National Retiree Legislative Network

TESTIMONY OF

BILL KADEREIT, PRESIDENT
NATIONAL RETIREE LEGISLATIVE NETWORK

BEFORE

THE COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

On

"Safeguarding Retiree Health Benefits"
Thursday, September 25, 2008
10:00 a.m.
2175 Rayburn HOB

Good morning, Chairman Miller and Members of the Committee. My name is Bill Kadereit and I am from Heath, Texas. I appear before you this morning as President of the National Retiree Legislative Network or NRLN, an organization that represents more than 2 million retirees across America. I commend you, Mr. Chairman, and the Committee for focusing on this vitally important topic and appreciate this opportunity to spend a few minutes with you this morning.

Our retiree organizations serves a cross section of the top Fortune 500 companies such as Boeing, IBM, Johns Manville, Alcatel Lucent, Prudential, Raytheon, Detroit Edison, Pacific Bell, GM, Ford, Chrysler, AT&T, and a dozen more.

Our members live in all 50 states and over 300 Congressional Districts. Although the majority of our membership is retired management employees, over 15% are retired union workers. Most of them feel betrayed by their former employers.

At the heart of this betrayal is that so many employees, even retired managers, were unaware that their former companies could break their promises to their retirees. For example, many retired managers say they were not aware that the lump sum pension payments offered as inducements to older workers to retire often came from workers' own pension plan assets. Nor did they realize that health care benefit plans contained statements that reserved to the company the right to reduce or cancel health care benefits. Retiree exit interviews ended with a handshake and the passing of an envelope stuffed with benefit promises.

<u>Sandy …… a retired IBM Manager who saw his own insurance bill triple in 2004 put it this way: "I feel I misled a lot of people, that I've lied to people;" then he said, "It does not sit well with me at all."</u>

Capping and cancelling health care liabilities in the 90's was the beginning of a disturbing trend that continues to this day. International Paper used FASB 106 to book health care liabilities and then introduced caps. The effect was $18.7 million in earnings gains each year through 2000. In 2000, 2001 and 2002 they capped benefits of newly acquired companies and through 2004 benefited by another $65 million. Sears implemented caps during the 90’s and fed $383 million to earnings since 1997.

IBM implemented caps in 1999 that affected 190,000 retirees. It took three years for retiree health care costs to reach the $625 cap but in 2002 retiree premiums increased nearly 67% and another 29% in 2003.

Adding the greatest insult to this injury is the heinous Equal Employment Opportunity Commission, or EEOC rule of 2007 which permits companies to discriminate against over-age-65 retirees who can have their benefits eliminated completely with companies claiming necessity in order to maintain benefits for younger workers. There are over 10,000,000 retirees over age 65.

Over-age-65 GM retirees will be forced onto Medicare without the catastrophic, dental, vision, or hearing insurance they now have, effective January 1, 2009. A GM retiree, who must purchase supplemental insurance, plus the four elements just cited, will be in the hole over $400 a month starting in January 2009. A retiree on a fixed income pension of $36,000 is going to lose between 18-20% of his or her after tax income if they replace all lost coverage. Ford, Chrysler and GM are casting a big shadow over the retirement landscape. Singling out over age 65 retirees sets an example that will lead to more companies targeting them. It is ironic that retirees under age 65 are no better protected now than before the EEOC rule became effective.

I am not blaming the Big Three. The trend is universal. The EEOC rule and the fact that ERISA does not vest retiree benefits are the real culprits. **For this reason, maintenance of health care benefits in effect on the day of retirement is a top NRLN priority.**

Congress must address the problem of catastrophic insurance for all retirees and Medicare eligible Americans. It is not just uninsured people who are vulnerable.

Robert ……, a 66-year-old Dallas retiree, has brain cancer. He gets free supplies of a tumor-fighting drug through a program for low-income families. His premiums have jumped by $365 a month, his deductible and co-pays and other out of pocket expenses are on top of that; “it eats up all the pension” which is $850 a month his wife, LaRue, says. They have cashed in his 401(k) account and taken out a second mortgage on their home. **Two other NRLN priorities are the inclusion of catastrophic coverage in Medicare and the creation of a Medicare buy-in option, at cost, for all under age 65 retirees.**

Elizabeth Warren, a Harvard Law School professor and one of the authors of Consumer Bankruptcy Project, examined a sampling of noncommercial bankruptcies from 1991 to 2007, and people 65 and up were more than twice as likely to file and the filing rate for those 75 and older more than quadrupled. This is very real and frightening!

So given all of this, what can Congress do to provide greater safeguards for retiree health benefits? The NRLN has three main recommendations:

> **First**, prevent broken promises to retirees and mitigate the harm from the EEOC ruling by offering incentives to companies but requiring them to maintain their existing level of health care contributions for retirees. This incentive could take the form of tax credits that would offset part of the cost. The NRLN calls this Maintenance of Cost Protection (MCP).

Second, amend ERISA to prohibit the use of defined benefit pension plan assets to make lump-sum severance payments—an operating expense that should be paid from a restructuring reserve or from operating revenues. This will ensure that any pension fund surplus can be applied to retiree health care costs through use of IRS Sec 420 transfers to 401(h) trusts, as long as a cushion of 120% of current assets is maintained in the pension fund.

Third, in 1986, Congress passed the "Medicare Catastrophic Act of 1988" that provided catastrophic insurance that would protect fixed income seniors from devastating health care bills. But it was attacked by seniors who declared it prohibitively expensive at the time. The law was repealed in 1989. Now is the right time to work out a new bill that solves the catastrophic dilemma.

Thank you, Mr. Chairman and members of the Committee. We stand ready to work with you and your staffs on these and other legislative proposals that you may consider. I'd be happy to answer any questions you or the Committee members may have.