

February 2, 2011

To: NRLN Grassroots Network Members  
From: NRLN President Bill Kadereit  
Subject: NRLN Takes Stand on Fiduciary Duty Protections

In November, the NRLN Board formed a Regulatory Affairs Committee (RAC) to continuously monitor rules proposed by federal administrative agencies charged with implementing legislation and filing comments if rules will substantially impact retirees. This week, the NRLN filed the RAC's first comments on an issue that could make a significant difference in the protection of retirees' pensions.

Regulatory comments were filed with the Employee Benefits Security Administration (EBSA) in the U.S. Department of Labor (DOL) urging the EBSA 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.

The NRLN's concern is that with more and more foreign companies acquiring or merging with American firms or creating subsidiaries in the U.S., the DOL and the Pension Benefit Guarantee Corporation (PBGC) will be unable to hold foreign fiduciaries accountable for breaches of fiduciary duty that could deplete pension plan assets. Our bottom line is 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 U.S. legal process but remain beyond the reach of U.S. court jurisdiction.

The current regulations governing ERISA (Employee Retirement Income Security Act) fiduciaries have not been updated since their promulgation in 1975. The RAC has noted that today, Chrysler is over 20% owned by Fiat, Alcatel-Lucent U.S is 100% owned by a French parent, and retirees from Kodak and other NRLN associations are very concerned because their pensions may become vulnerable to a foreign owner or fiduciary.

In its comments, the NRLN's committee argued that "named fiduciaries," as defined by Section 402 of ERISA should be:

- (1) subject to the jurisdiction of U.S. district courts for the purpose of enforcing judgments under ERISA, and
- (2) 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.

I want to thank the NRLN's Regulatory Affairs Committee for its diligent work on this fiduciary issue and the research and writing done by Michael Calabrese, NRLN Legislation Adviser. The committee is Chaired by Stan Hurst, NRLN Vice President – Regulatory Affairs, a retired Chrysler attorney who is a member of the leadership team of the National Chrysler Retirement Organization. Committee members include Ray Sternot, AT&T Ameritech/SBC Retirees; Ray Sturdy, Detroit Edison Alliance of Retirees; Herb Zydney, Lucent Retirees Organization; Marta Bascom, NRLN Executive Director, and Mr. Calabrese.

The committee members are off to a strong start. I'm sure you join me in looking forward to what retirees stand to gain from their efforts to influence the regulator process. I encourage you to read the entire response to the EBSA that is posted on the NRLN website. [Click here](#) to access the comments.

Bill Kadereit, President, National Retiree Legislative Network