



Summary of NRLN 2010 Legislative Agenda

2010 TOP INITIATIVES

PENSION ASSET PROTECTION (PAP): The NRLN advocates legislation that stops corporations from taking pension assets from defined pension plan trusts to pay for lump sum severance and early retirement incentives. The NRLN advocates that pension funds not be used to pay executive non-qualified pensions and other deferred compensation. The NRLN advocates that pension plan assets should not be transferred to or be taken over by third party financial or other institutions.

PBGC REFORM: The NRLN advocates that the Pension Benefits Guaranty Corporation must be regulated to ensure equitable calculations of benefit payments earned by retirees.

BANKRUPTCY REFORM: The NRLN advocates that bankruptcy reform is needed to place retirees' pensions and benefits on a list of obligations that companies can't shed. Retirees often lose pension, health care, and other benefits and, unlike secured creditors, rarely have the ability to recover losses.

PROTECTION AND ENHANCEMENT OF RETIREE HEALTH CARE BENEFITS:

MAINTENANCE OF COST PAYMENT: The NRLN advocates a Maintenance of Cost Payment (MCP) proposal that would establish a fixed monthly payment to retirees equivalent to the value an employer provided prior to the reduction or cancellation of retirement health care, prescription drugs, life insurance, long-term care or other benefits. Companies would be entitled to tax credits as an offset to MCP payments.

MEDICARE BUY-IN FOR AGES 55-64: The NRLN advocates that adults age 55 to 64 be allowed to buy Medicare coverage at a cost that does not burden the Medicare system. Access could be limited to individuals without access to an employer-sponsored or other group health plan that is actuarially equivalent or superior to Medicare.

INCLUSION OF CATASTROPHIC COVERAGE IN MEDICARE: 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.

PROTECT RETIREES IN MERGERS & ACQUISITIONS: The NRLN advocates law that clarifies what a parent foreign owner's pension plan obligations are to abide by ERISA should its U.S. subsidiary be spun off or dissolved. Clarification must include situations where foreign corporations that own U.S. subsidiaries are also acquired by a third party, foreign-owned corporation.

REDUCE THE COST OF PRESCRIPTION DRUGS: The NRLN advocates the reduction of prescription drug costs for Americans through passage of legislation that: (1) Enables re-importation and importation of safe prescription drugs approved by the FDA; (2) Enables Medicare to develop formularies and take competitive bids for prescription drugs; (3) Staffs and funds the FDA to reduce the generic drug approval backlog; (4) Prevents drug companies from colluding to control pricing or subvert free market practices.

PROTECT MEDICARE: 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 services.

PROTECT SOCIAL SECURITY: The NRLN advocates legislation to make Social Security financially sound without reducing current and future retiree benefits.

THE REMAINDER OF THE 2010 NRLN LEGISLATIVE AGENDA

Cash Balance Plans: The NRLN advocates the elimination of "wear-away" rules contained in cash-balance plans.

EEOC Rule: The NRLN advocates elimination of the EEOC final ruling issued on December 26, 2007, allowing employers to cancel earned health care benefits of Medicare eligible retirees.

Company Benefits Bundling: The NRLN advocates legislation to prohibit companies from forcing retirees to choose between company pre-determined bundles of plans or none of their sponsored Health Care and Prescription Drug Plans. Bundling practices hold retirees hostage to such plans.

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.

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: The NRLN advocates new legislation that enables health care and Medicare premiums to be tax deductible, similar to the way health

insurance premiums for the self-employed are deductible. Such deductions would be exempt from the 7.5% (AGI) limitation.

Health Savings Accounts (HSA's): The NRLN advocates changing the 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: The NRLN advocates laws that enable penalty- free withdrawals from 401k, IRA, SEP and other qualified accounts to pay retiree health care premiums.

Alternate Minimum Tax: The NRLN advocates legislation that raises the Alternative Minimum Tax threshold level and also the annual inflation indexing of the threshold.

Taxing Social Security Income: The NRLN advocates legislation to amend the tax codes to eliminate federal and state taxes on all Social Security income and/or allow a tax credit for taxes withheld.

401-k / IRA Mandatory Distribution Requirement From 70 ½ to age 75: The NRLN advocates legislation that will allow individual choice to defer Required Mandatory Distribution (RMD) from retirement savings accounts.

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NRLN Legislative Agenda – 2010

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PENSION PROTECTION:

Protection of Defined Pension Plan Assets From Use In Company Restructuring:

Support new legislation, likely an amendment to ERISA that 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 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, take the form of incentives designed to get retirees to retire early, are usually offered in exchange for a waiver of rights by older workers which limits the company's age discrimination liability, and dilute defined benefit pension

plan assets. Use of pension plan assets in this fashion thus benefits shareholders, not plans participants, and should not be paid from pension trusts.

Examination of the underlying nature of the these costs reveals they are corporate restructuring costs to be borne by shareholders not by defined benefit pension plans. Accrued vested assets of plan participants should not be raided. Non-union plan participants have no bargaining power to limit corporate power and are entitled to this proposed ERISA protection. This highly questionable practice has led to under-funding or near under funding of defined benefit pension plans and thus directly increases the risk of under-funding and PBGC takeover where plan liabilities have outgrown assets and/or equity markets have tumbled.

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. The NRLN believes that such lump sum severance or layoff payments should properly be treated as a corporate expense, payable out of the corporation's own assets, not as a pension benefit paid out of defined benefit plan assets. Long-time ERISA and tax lawyers and Congressional staff have resisted legal changes in this area, arguing that plan sponsors have always been allowed to treat such expenses as pension benefit payments. This sacred-cow type 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.

We urge creation, sponsorship and passage of a bill that limits the ability of a company to tap pension assets to pay for what properly should be considered restructuring expense.

Cash Balance Plans: Revenue Ruling 2008-7: The NRLN supports members of Congress, AARP and the Pension Rights Center in the reversal of this ruling's endorsement of the use of "wear-away" which was rejected by Senate resolution in 2000 and prevented by the Pension Protection Act of 2006. NRLN involvement is support of other organizations and members of Congress who share our views.

Management of Defined Pension Plans By High Risk Third Parties: 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 integrity of Defined Pension funds against schemes designed to enhance corporate profits.

Misuse of Defined Pension Plans To Enhance Executive Deferred Compensation (Qserp): Pension Reform Act of 2006 must reaffirm IRS rules that state that Defined Pension Plans "Must not discriminate in favor of highly compensated employees". If a

company desires to provide enhanced supplemental deferred compensation, 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 security at risk and deny participants the opportunity to benefit from IRS Sec 420 transfers to pay for health care and preclude COLA consideration.

Foreign Takeovers: The Pension Reform Act of 2006 must be modified to provide additional protection to insure protection of existing pension plan assets (and health care benefits) from exhaustion by foreign country corporations and would require them to fully fund pension plans.

PENSION BENEFITS GUARANTEE CORPORATION (PBGC)

REFORM:

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 rules 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.

PBGC Rules And Regulations Proposed Changes:

- The PBGC shall 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). These changes shall be retroactive and apply to all defined benefit plans terminated after September 11, 2001.
- PBGC rules be modified to require the PBGC to use 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) including those used to determine the termination values of plans must make public the accounting assumptions between ERISA fund reporting and the PBGC plan-termination-funding calculations as well as full disclosure of all 4010 filings and calculations upon request.

- Amend the PBGC reporting structure so it is accountable to one Federal Department.
- Rise to 'Administrative Status' retiree claims to assets in Bankruptcy filings.

HEALTH CARE PROTECTION:

EEOC Rule: The NRLN opposes the final ruling issued by the EEOC on December 26, 2007, allowing any employer to cancel earned health care benefits to all Medicare eligible salaried retirees is discriminatory and must be reversed by Congressional action directly or through mandating MCP payments and / or creating solutions through Medicare reform and/or other health care legislation.

Company Provided Retiree Health Care: The NRLN supports incentives to continue company retiree health care plans so that it is provided to all eligible retirees including those receiving Medicare benefits.

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 and Prescription Drug Plans. This bundling practice holds retirees hostage to company plans.

Encourage Retention Of Company-Provided Health Care For Retirees: Support new 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, and who agree to maintain their current plans.

HEALTH CARE REFORM:

Maintenance of Cost Payments (MCP): In the event that a corporation cancels or reduces all or part of a retiree's healthcare 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.

Medicare Advantage Plan: 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. Currently, the proposed national health care reform bills threaten to reduce and possibly eliminate these subsidies. Scheduled 2010 subsidy reductions have driven Medicare Advantage Plan prices up by 100% or more in some cases and affected retirees are evaluating a switch to lower cost Medigap plans. CMS 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.

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.

Oppose Taxing Health Care Benefits: The NRLN opposes health care reform proposals to tax Americans on the value of health care benefits received from employers.

The portion of premiums paid by employers is currently treated as a tax-free benefit to employees and retirees. Eliminating the tax-free status or replacing it with a tax credit or deduction of employer-sponsored health care benefits is wrong and does grave harm to retirees.

National Health Care: NRLN supports the inclusion of the requirement for catastrophic care in any new National Health Care legislation.

NRLN supports legislation that would enable the competitive sale of private insurance plans on a national basis with appropriate regulation. NRLN supports the elimination of pre-existing condition restraints to private insurance eligibility that would create more affordable premiums.

NRLN is opposed to any health care legislation which might create an incentive for companies to drop retiree health care while not providing equivalent coverage at a cost comparable to that paid by retirees for such pre-existing health care coverage.

MEDICARE REFORM:

Changes To Medicare A & B:

- The addition of Catastrophic Coverage.

- Modification of the Sustainable Growth Rate formulation to provide adequate compensation for medical providers to assure availability of Medicare accepting physicians.
- Permit Medicare buy-in for retirees between ages 55 and 64 at an age-adjusted premium.

Prescription Drug Legislation:

Importation/Re-importation: Importation involves foreign manufactured drugs imported into the U.S. Most U.S. companies manufacture offshore 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 importation of prescription drugs, and for other purposes.

Competitive Bidding: NRLN supports legislation to allow competitive bidding for Prescription Drugs under any federally supported health programs.

Generic Drugs: Brand Name drug manufactures pay a user fee to the FDA to help provide 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 – 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 close and/or eliminate the Medicare Part D prescription “donut hole”.

BANKRUPTCY REFORM:

Current bankruptcy laws do not offer clear cut rules that assure equal treatment to retirees that lose their pension and health care benefits as provided to “Secured Creditors.” Bankruptcy courts have stymied retirees from making claims under Section

1114 rules by ruling for companies because they can establish the existence of a Reservation of Rights (ROR) clause.

Bankruptcy Law Proposed Changes: Require that companies must provide retirees with an updated list of all retirees and that it must be updated throughout Bankruptcy proceedings.

- Disallow company Reservation of Rights (ROR) clauses as reason for denying retiree's rights to a Section 1114 Committee.
- Mandate Section 1114 Committee within 60 days of Chapter 11 filing date.
- Permanently increase the Health Coverage Tax Credit (HCTC) payment from 65% to 80% (post stimulus).
- Rise to 'Administrative Status' retiree claims to assets in Bankruptcy filings.
- The NRLN supports legislation that would prohibit unions from negotiating or approving the revision or termination of collectively bargained benefits of retirees in bankruptcy proceedings.

Require pension plan sponsors to fund underfunded plans after passage of 386 days from date of filing for Bankruptcy.

SOCIAL SECURITY REFORM:

The view of the NRLN is that the Social Security system is not broken. Congress must decide to keep its promises and honor the terms of the present system that it is guaranteed for life and adjusted for inflation. The NRLN supports legislation to amend tax codes to eliminate all federal and state taxes on all Social Security income.

TAX REFORM:

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 (HSA's): 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.

Alternate Minimum Tax: Support legislation by raising the threshold level and indexing to inflation.

Taxing Social Security Income: Support legislation to amend the tax codes to eliminate federal and state taxes on all Social Security income and/or allow a tax credit for taxes withheld.

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 calculated on market decline years and/or allows losses to be taken when such mandatory withdrawals occur.

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