

August 12, 2009

To: NRLN Grassroots Network Members

From: NRLN President Bill Kadereit

Subject: NRLN Advocates Revisions to House Healthcare Bill Amendments

You may recall that in my July 15th message to NRLN Grassroots Network members, I reported that in the U.S. House TriCommittees' healthcare reform bill released on July 14th there were elements of the NRLN's Maintenance of Cost Payment (MCP) proposal to protect retiree benefits. During the days prior to the House's August Recess, the TriCommittees' bill went through what is known as the "markup" process and two "Manager's Amendments" were added to the bill.

These amendments are in Sections 164 and 165 of H.R. 3200, *America's Affordable Health Choices Act of 2009*. While these Sections reflect our MCP proposal and what we had asked Congress to do, we have been studying these Sections and our Washington, DC staff has been discussing the language with influential members of House committees and staff members of those committees. The NRLN has concluded that certain aspects of both Sections need to be changed to provide the most protection to retirees' healthcare benefits.

First, I'll address Section 165 which if enacted would amend the Employee Retirement Income Security Act of 1974 (ERISA) to expressly bar employer-sponsored healthcare plans from reducing medical, surgical, hospital and prescription drug benefits for retirees and beneficiaries after an individual retires. This is similar to the objective of our MCP and would be very beneficial to retirees and their beneficiaries. In essence, it would provide ERISA protection to retirement healthcare benefits similar to the protection granted under ERISA to pension plans.

After stating that retirees' benefits are barred from being reduced, language was unfortunately added stating, "unless such reduction is also made with respect to active participants." The NRLN opposes this exception. It would provide an incentive to employers to reduce retirees' healthcare benefits by also reducing the benefits of active employees or by reducing existing retiree benefits to a lower level that matched benefits of active employees. We know of a number of cases where the active employees' health care benefits have already been eliminated but retirees still have some benefits.

In addition to advocating that this exception be removed, the NRLN is asking the TriCommittees' leaders to make the Section 165 ERISA protection effective 12-31-2008. Many NRLN members experienced significant changes in their healthcare benefits on 1-1-2009.

As you may recall, our MCP included a proposal to provide incentives for employers to maintain healthcare benefits for all retirees. While there is not a tax credit incentive currently in Sections 164 and 165 as the MCP proposed, Section 164 would establish a "reinsurance program" to provide reimbursement to employers for much of the cost of providing health benefits to retirees age 55 or older, but not Medicare eligible, and to eligible spouses, surviving spouses and dependents of retirees. A federal trust fund would reimburse employers for 80% of the claim cost that exceeds \$15,000 but is less than \$90,000. The NRLN supports this incentive but requests Section 164 be changed to include all retirees, including Medicare-eligible retirees.

Our Washington, DC staff believes that the NRLN needs to generate a considerable amount of retiree support for Sections 164 and 165, along with the changes we deem necessary, to keep

these amendments in H.R. 3200 when the House takes up the bill again after Labor Day. Following this message is the latest draft of the NRLN's "Talking Points" that includes what we want to happen with healthcare reform plus pension asset protection, bankruptcy reform and PBGC rule changes.

Please print out these "Talking Points" to use and leave with your Senators and Representative when you meet with them during the August Recess whether during personal appointments or town hall meetings. The NRLN Grassroots Network members who will be going to Washington, DC on September 15-17 for meetings on Capitol Hill are encouraged to begin their "homework" with these "Talking Points." If situations change during the coming weeks, we will update the "Talking Points" as necessary.

Soon, I will be sending letters to the leaders of the TriCommittees to urge them to keep Sections 164 and 165 in the bill, but make the changes that the NRLN believes are crucial to protecting retirees' healthcare benefits. In addition, I will be asking the Grassroots Network members who are constituents of the TriCommittees' leaders to respond to an NRLN Action Alert and send the emails advocating the NRLN's position on the amendments.

After two years of lobbying for the MCP (read the NRLN Legislative Agenda at www.nrln.org), the concepts are in the House bill, but fine tuning is necessary. Now that we are this close we must work together to keep the concepts in the House bill. The Senate bill that is still being drafted does not currently contain these provisions for retirees.

Bill Kadereit, President
National Retiree Legislative Network

National Retiree Legislative Network **Legislative Agenda Priorities**

PENSION ASSET PROTECTION, BANKRUPTCY and PBGC RULES REFORM

Protection of Defined Pension Plan Assets: – The NRLN's proposed refinements to the **Pension Protection Act of 2006** are vital to the continued protection of plan assets and PBGC viability, and to the generation of surplus assets that can be used to offset corporate healthcare costs or be available for Cost of Living Adjustments (COLA's). Pension plan assets must:

- Not be used to pay for corporate restructuring lump sum severance allowances or buyouts.
- Not be used to pay for executive management non-qualified pensions or other deferred compensation.
- Not be at risk to be sold by plan sponsors or the PBGC to third party financial or other institutions.

Pension Funding Rules - Increase the maximum asset funding contribution level from 100% to 120% so companies can over-fund plans when cash flow permits.

Bankruptcy Reform –

- Require that companies must provide retirees with an updated list of all retirees and that it must be updated throughout Chapter 11 proceedings.
- Mandate Section 1114 Committees within 60 days of Chapter 11 filing date.
- Permanently increase the Health Coverage Tax Credit (HCTC) payment from 65% to 80% (post stimulus).
- Disallow company Reservation Of Rights (ROR) clauses as reason for denying retiree's rights to a Section 1114 Committee.
- Require pension plan sponsors to fund underfunded plans after passage of 365 days from date of filing for Chapter 11 protection.

PBGC Rules Reform –

- Proposed Bill - The Pension Benefit Guarantee Corporation 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). In addition, the retiree's actual age and length of service at retirement will be used when calculating benefits protected under Priority Category PC3. These changes shall be retroactive and apply to all defined benefit plans terminated after Sept 11, 2001.
- PBGC termination valuation – PBGC rules used to determine the termination values of plans and all other PBGC rules and guidelines should be fully disclosed and made a part of the Pension Protection Act (PPA) of 2006.

Go to www.nrln.org and click on the link to read the NRLN's complete Legislative Agenda.

National Retiree Legislative Network **Legislative Agenda Priorities**

HEALTHCARE INCLUDING PRESCRIPTION DRUGS

- **The House TriCommittee bill H.R. 3200 incorporates MCP concepts:** H.R. 3200, Section 165 – Prohibition Against Post-Retirement Reductions of Retiree Health Benefits - **bars the reduction of retiree benefits post-retirement** and prohibits reservation of rights clauses as a plan sponsor defense, “unless such reduction is also made with respect to active participants”. The NRLN opposes the quoted exception and also requests a revision such that Section 165 protection becomes effective 12-31-2008.
- H.R. 3200, Section 164 – Reinsurance Program for Retirees - creates a temporary reinsurance program for retirees age 55 or older but not Medicare eligible. **Companies would be reimbursed for the cost of benefits paid to retirees or eligible dependents** and for plan deductibles, co-payments and co-insurance. Plans would be reimbursed for 80% of the claim cost that exceeds \$15,000 but is less than \$90,000. The NRLN supports this incentive only if Section 164 is amended to include Medicare-eligible retirees.

- Pass legislation that enables **importation** of prescription drugs, **competitive bidding** of Medicare-D prescription drugs; funding the FDA to **reduce generic drug backlogs**; stopping brand drug makers from **paying generic drug manufacturers** to withhold generic drugs off the market.

Use savings from the four initiatives above to pay for the **elimination of the "doughnut hole"** in the Medicare Part D prescription drug plan and to pay for a Medicare catastrophic benefit and a large amount of national healthcare.

- When an employer eliminates its healthcare plan, retirees usually lose "catastrophic coverage" which limits out-of-pocket medical expenses to a fixed amount, such as \$1,500. Given this loss, the NRLN believes that **catastrophic coverage** should be added to Medicare.
- It is difficult for many men and women age 50 to 64 who have been laid off or retired early—either forced or voluntary—to purchase affordable healthcare insurance because of their age. They should be allowed to **buy into Medicare at a cost** that does not burden the system.

Healthcare Taxation:

- Don't tax employer benefits or premiums and leave the AGI threshold 7.5%.

Go to www.nrln.org and click on the link to read the NRLN's complete Legislative Agenda. To read the NRLN testimony by Bill Kadereit on healthcare for retirees before the House Education & Labor Committee in September 2008, go to <http://www.nrln.org/NRLN%202008%20Action%20%20Accomplishments%20Handouts.pdf>